

IN THE SUPREME COURT OF TEXAS

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No. 96-1241
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ROBERT AUGUST BOCQUET,
THE ESTATE OF PHILLIP EDMUND BOCQUET, DECEASED,
MALCOLM OSCAR BOCQUET, BLANCHE EUGENIA BEECHIE,
WILLIE GRANATA, R. G. WEYEL, GLENN HOWARD,
OLIVER W. HOWARD, AND WIFE, LORRAINE M. HOWARD,
LOUIS J. PANTUSA, ET AL., PETITIONERS

v.

EARL HERRING AND WIFE, FLORENCE CANALES HERRING,
RESPONDENTS

=====
ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS
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JUSTICE HECHT delivered the opinion of the Court, in which CHIEF JUSTICE PHILLIPS, JUSTICE GONZALEZ, JUSTICE SPECTOR, JUSTICE OWEN, JUSTICE ABBOTT, and JUSTICE HANKINSON join.

JUSTICE BAKER issued a dissenting opinion, in which JUSTICE ENOCH joins.

The Declaratory Judgments Act provides that in any proceeding under the Act “the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.” TEX. CIV. PRAC. & REM. CODE § 37.009. The question here is, by what standard is such an award of attorney fees to be reviewed on appeal.

Earl Herring and his wife sued two groups of defendants, the Bocquet parties and the Weyel parties, for a judgment declaring that defendants were not entitled to access their property by means of a roadway easement on the Herrings’ property. Defendants counterclaimed for a declaration of their rights and for tort damages. On cross-motions for summary judgment, the district court granted judgment for defendants and severed their claims for attorney fees and damages. The court of appeals affirmed in an unpublished opinion, and we denied plaintiffs’ application for writ of error. 37 TEX. SUP. CT. J. 1180 (July 28, 1994). The defendants nonsuited their tort claims, and the parties

then tried defendants' claim for attorney fees to the bench. The district court awarded \$50,000 to the Bocquet parties, \$45,000 to the Weyel parties, and \$7,500 to all defendants jointly in the event the Herrings appealed unsuccessfully.

The Herrings appealed, arguing that the attorney fee award was an abuse of discretion, was not supported by factually or legally sufficient evidence, and was not equitable or just. While the appeal was pending, the Herrings settled with the Weyel parties. The court of appeals held that "[t]he standard of review is an abuse of discretion", 933 S.W.2d at 613, that whether attorney fees are "reasonable and necessary . . . must be decided by the fact finder", *id.* at 614, that the trial court's "findings are only to be disturbed if there is an abuse of discretion", *id.*, and that "both the time and the amount awarded to the appellees['] attorneys [was] excessive", *id.* at 615. The court reversed and remanded for a new trial unless the Bocquet parties remitted \$23,750 of their award. In so doing the appeals court appears to have sustained the Hennings' second point of error complaining of the insufficiency of the evidence. The Bocquet parties did not remit but instead appealed to this Court.

To determine the correct standard of review, we look first to the statute. The Declaratory Judgments Act does not require an award of attorney fees to the prevailing party. Rather, it provides that the court "may" award attorney fees. The statute thus affords the trial court a measure of discretion in deciding whether to award attorney fees or not. *Commissioners Court v. Agan*, 940 S.W.2d 77, 81 (Tex. 1997); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 637-638 (Tex. 1996); *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 444-446 (Tex. 1994); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 398-399 (Tex. 1989); *Duncan v. Pogue*, 759 S.W.2d 435, 435-436 (Tex. 1988); *Oake v. Collin County*, 692 S.W.2d 454, 455-456 (Tex. 1985). The same is true of other statutes that provide that a court "may" award attorney fees. *E.g.* *City of Sherman v. Henry*, 928 S.W.2d 464, 474 (Tex. 1996) (applying TEX. LOC. GOV'T CODE § 143.015(c)); *Bruni v. Bruni*, 924 S.W.2d 366, 368 (Tex. 1996) (reviewing fees in suits affecting the parent-child relationship under former TEX. FAM. CODE § 11.18(a), recodified as § 106.002). Statutes providing that a party "may recover", "shall be awarded", or "is entitled to" attorney fees

are not discretionary. *E.g.*, *D.F.W. Christian Television, Inc. v. Thornton*, 933 S.W.2d 488, 490 (Tex. 1996) (applying TEX. CIV. PRAC. & REM. CODE § 38.001(8)); *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997) (discussing "reasonable and necessary attorneys' fees" under TEX. BUS. & COM. CODE § 17.50(d)); *Ragsdale v. Progressive Voters League*, 790 S.W.2d 77, 86 (Tex. App.—Dallas 1990), *aff'd in part and rev'd in part on other grounds*, 801 S.W.2d 880 (Tex. 1990) (applying former TEX. ELEC. CODE § 251.008, recodified as § 253.131).

The Act imposes four limitations on the court's discretion. The first is that fees must be reasonable. In general, "[t]he reasonableness of attorney's fees, the recovery of which is authorized by . . . statute, is a question of fact for the jury's determination." *Trevino v. American Nat'l Ins. Co.*, 168 S.W.2d 656, 660 (Tex. 1943). *Accord: Stewart Title Guar. Co. v. Aiello*, 941 S.W.2d 68, 73 (Tex. 1997); *Snoke v. Republic Underwriters Ins. Co.*, 770 S.W.2d 777, 778 (Tex. 1989) (per curiam); *Great Am. Reserve Ins. Co. v. Britton*, 406 S.W.2d 901, 907 (Tex. 1966); *Gulf Paving Co. v. Lofstedt*, 188 S.W.2d 155, 160-161 (Tex. 1945); *Johnson v. Universal Life & Accident Ins. Co.*, 94 S.W.2d 1145, 1146 (Tex. 1936). The second limitation, that fees must be necessary, is likewise a fact question. *General Motors Corp. v. Bloyed*, 916 S.W.2d 949, 961 (Tex. 1996). There are, of course, factors prescribed by law which guide the determination of whether attorney fees are reasonable and necessary. *Arthur Andersen*, 945 S.W.2d at 818 (quoting TEX. DISCIPLINARY R. PROF. CONDUCT 1.04, *reprinted in* TEX. GOV'T CODE., tit. 2, subtit. G app. (STATE BAR RULES, art. X, § 9)).

The Act's other two limitations on attorney fees awards are that they must be equitable and just. Matters of equity are addressed to the trial court's discretion. *Knebel v. Capital Nat'l Bank*, 518 S.W.2d 795, 799 (Tex. 1974); *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939). So is the responsibility for just decisions. *Murff v. Murff*, 615 S.W.2d 696, 699-700 (Tex. 1981); *Carle v. Carle*, 234 S.W.2d 1002, 1005 (Tex. 1950).

In sum, then, the Declaratory Judgments Act entrusts attorney fee awards to the trial court's sound discretion, subject to the requirements that any fees awarded be reasonable and necessary,

which are matters of fact, and to the additional requirements that fees be equitable and just, which are matters of law. It is an abuse of discretion for a trial court to rule arbitrarily, unreasonably, or without regard to guiding legal principles, *e.g.*, *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997), or to rule without supporting evidence, *Beaumont Bank v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). Therefore, in reviewing an attorney fee award under the Act, the court of appeals must determine whether the trial court abused its discretion by awarding fees when there was insufficient evidence that the fees were reasonable and necessary, or when the award was inequitable or unjust. Unreasonable fees cannot be awarded, even if the court believed them just, but the court may conclude that it is not equitable or just to award even reasonable and necessary fees. This multi-faceted review involving both evidentiary and discretionary matters is required by the language of the Act.

In the present case, we find nothing to indicate that the district court's attorney fee award was unjust or inequitable, and there was some evidence to support it. The court of appeals did not reach a contrary conclusion. Although the court of appeals' opinion is not completely clear on the matter, we read it to sustain the Herrings' complaint that the evidence of reasonableness and necessity of attorney fees was factually insufficient, given the court's conclusions that the fees awarded were excessive and that a remittitur was appropriate. It would be an abuse of discretion for the district court to award fees without factually sufficient supporting evidence. But before the court of appeals could reach that conclusion, it was required to detail all relevant evidence and explain why the evidence was factually insufficient. *Rose v. Doctors Hospital*, 801 S.W.2d 841, 848 (Tex. 1990). This it did not do.

Accordingly, the Court grants the Bocquet parties' application for writ of error and, without hearing oral argument, reverses the judgment of the court of appeals and remands the case to that court to redetermine the factual sufficiency of the evidence of the reasonableness and necessity of the attorney fees awarded by the district court. TEX. R. APP. P. 59.1. The determination should be made in light of the standards prescribed in Rule 1.04 of the Texas Disciplinary Rules of

Professional Conduct. If the court finds the evidence sufficient, the district court's judgment must be affirmed; if the court finds the evidence insufficient, it may affirm conditioned on a remittitur or remand for further proceedings.

Nathan L. Hecht
Justice

Opinion delivered: April 14, 1998