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## THE BASSETT BULLETIN™

### IMPORTANT NEW TEXAS SUPREME COURT CASE

#### WHAT CONSTITUTES A REASONABLE FEE FOR A GUARDIAN AD LITEM?

On Friday, 15 December 2006, the Texas Supreme Court handed down its opinion in *Land Rover U.K., LTD. Et al. vs. Juan J. Hinojosa*. The issue before the Court was whether or not the fees awarded to a guardian ad litem were excessive. The Supreme Court reversed the decision of the Court of Appeals and remanded the case to the trial court to reconsider the guardian ad litem fee.

#### FACTS OF THE CASE

Various manufacturers, including a tire manufacturer and retailer, were sued after a family suffered injuries in a rollover accident. The tire manufacturer and retailer settled the action with the family for \$45,000.00. Due to minors being involved, the Court appointed a guardian ad litem under Tex.R.Civ.P.173.

At a hearing to finalize the settlement with the manufacturer, the guardian ad litem, requested a fee of \$100,000.00 for his work. The trial court ordered the amount be paid and the appellate court affirmed the trial court's ruling. The manufacturer appealed to the Texas Supreme Court, arguing that the trial court abused its discretion in awarding excessive guardian ad litem fees. The Supreme Court reversed and remanded the cause to the trial court to reconsider the amount of the guardian ad litem fees.

#### APPLICABLE LAW

**1. Texas Rule of Civil Procedure 173**

The applicable version of Texas Rule of Civil Procedure 173 states that when a minor "is represented by a next friend or guardian who appears to the court to have an interest adverse to such minor, . . . the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as a part of the costs." TEX. R. CIV. P. 173 (1943, amended 2005).

**2. Case Law**

A reasonable hourly rate multiplied by the number of hours spent performing necessary services within the guardian ad litem's role yields a reasonable fee. See *Garcia v. Martinez*, 988 S.W.2d 219, 222 n.2. Additional sums are rarely appropriate, particularly since the guardian ad litem serves, in part, as an advisor to the court and will enjoy the protection of qualified judicial immunity. See TEX. R. CIV. P. 173 cmt. 5.

To determine a reasonable fee for a guardian ad litem's services, a trial court applies the factors below to determine the reasonableness of attorney's fees. See *Garcia*, at 222. These factors are:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (2) The likelihood . . . that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Texas courts have long held that as the personal representative of a minor, a guardian ad litem is required to participate in the case only to the extent necessary to protect the minor's interest and should not duplicate the work performed by the Plaintiff's attorney. See *Jocson v. Crabb*, 133 S.W.3d 268, 270-71 (Tex. 2004); *Am. Gen. Fire & Cas. Co. v. Vandewater*, 907 S.W.2d 491, 493 n.2 Tex. 1995). Also, if a guardian ad litem performs work beyond the scope of this role, such work is non-compensable. See *Brownsville-Valley Reg'l Med. Ctr., Inc. v. Gamez*, 894 S.W.2d 753, 756-57 (Tex. 1995).

## DECISION OF THE SUPREME COURT

The respondent in this case, Hinojosa, relied on his testimony at the hearing finalizing the settlement with Land Rover, the manufacturer, to support the reasonableness of his fee. He testified that his experience and reputation as an attorney and a state legislator commanded a substantial fee. Hinojosa explained that he earns a fee of between \$300 and \$500 per hour for his legal work and sought his top hourly rate in this case. He also claimed that he turned down other cases while representing Tyler (the minor). He estimated that after the settlement, he spent ten hours per week for fifteen weeks representing Tyler's interests, or between 140 and 150 hours total. At a billing rate of \$500 per hour, he testified that the total hourly fee was between \$70,000 and \$75,000. Hinojosa testified that \$100,000 included compensation for other cases he had to refuse.

The Supreme Court found that Hinojosa's testimony made it clear that he was providing extensive advice to the Plaintiffs' attorney that was beyond the formal role of a guardian ad litem. Hinojosa's work entailed almost daily consultations about trial strategy. The Supreme Court stated that while such services may indeed benefit the minor, they are within the duties of the lawyer representing the minor in the litigation, not within the duties of the ad litem.

As a result, the time should not have been included in Hinojosa's estimation of time spent serving as guardian ad litem, and the additional cost should not have been assigned as costs payable to Hinojosa. Therefore, the court found the amount awarded was unreasonable and remanded the case to the trial court to reconsider the amount of the guardian ad litem fees.

## CONCLUSION

The Texas Supreme Court's decision seems to limit and put under scrutiny excessive guardian ad litem fees. A guardian ad litem fee should be the product of a reasonable hourly rate multiplied by the time spent acting as a guardian ad litem. The Court made it clear that an ad litem's duties are to protect the minor's interest, and not to perform the work of a Plaintiff's attorney. In order to determine whether or not the fee is reasonable, one should look at the factors listed previously.

One way to evaluate ad litem fees is to look at the itemized statement of the guardian ad litem's bill. If you are not provided one, ask for it, and do it before the hearing. Check to see if there are any charges that would normally be work a Plaintiff's attorney would do. As for the appointed guardian ad litem, it is best to keep a detailed documentation of the work conducted, in the event the fees are called into question.

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