

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

EMILY BAKER

RESPONDENT,

**v.
DEPARTMENT OF MENTAL
HEALTH FOR THE STATE OF
MISSOURI**

APPELLANT.

DOCKET NUMBER WD75423

DATE: June 25, 2013

Appeal From:

Saline County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Judge and Cynthia L. Martin, Judge, CONCURRING
Joseph M. Ellis, Presiding Judge, DISSENTS IN SEPARATE OPINION

Attorneys:

D. Ryan Taylor, Kansas City, MO, for appellant.

Jonathan D. McQuilkin, Columbia, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

**DEPARTMENT OF MENTAL
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Before Division Three: Joseph M. Ellis, Presiding Judge, Lisa White Hardwick, Judge and Cynthia L. Martin, Judge

The Department of Mental Health appeals the circuit court's judgment awarding attorney fees and expenses in the amount of \$21,683.01 to Emily Baker as a prevailing party pursuant to section 536.087. Baker successfully appealed DMH's decision to place Baker on the employee disqualification list for allegedly abusing a consumer and class II neglect. DMH argues that the circuit court committed legal error in finding that DMH's position in the underlying action was not substantially justified. DMH alternatively argues that the circuit court erred in awarding Baker attorney fees at a rate in excess of the statutorily prescribed rate of \$75 per hour.

Majority Opinion holds:

Affirmed in part, reversed in part, and remanded.

(1) DMH's assertion that the circuit court was required as a matter of law to consider whether DMH acted in good faith, how the facts appeared to DMH at the time it initiated its action, and the thoroughness of DMH's investigation, is not supported by the law.

(2) Nothing in the judgment permits the conclusion that the circuit court presumed that DMH acted without substantial justification merely because Baker prevailed in the underlying action.

(3) Although the circuit court's factual findings that two attorneys refused to represent Baker for the reasons stated are supported by competent and substantial evidence on the record as a whole, on this record, the findings are not legally sufficient to constitute a special factor justifying a fee higher than the statutorily prescribed rate in that the findings do not correlate to whether there were limited qualified attorneys available to handle Baker's administrative case.

(4) Although the circuit court's factual finding that Baker's case was "factually complex" may have been supported by the record as a whole, on this record, the finding is not legally sufficient to constitute a special factor justifying a fee higher than the statutorily prescribed rate in that there was no credible evidence of a concomitant effect of limiting the number of qualified attorneys available to handle the matter.

(5) The mere fact an agency proceeding or civil action brought by or against the state will require representation at the agency, circuit and appellate levels is legally insufficient to establish a special factor justifying a fee higher than the statutorily prescribed rate.

Dissenting Opinion holds:

(1) Contrary to the holding of the majority opinion, the trial court's finding of a special factor under § 536.085(4) and its award of fees at an hourly rate of \$150 per hour should be affirmed. Section 536.085(4) provides that "attorney fees shall not be awarded in excess of seventy-five dollars per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." The circuit court found credible the testimony of Baker's counsel regarding the limited availability of qualified attorneys and, further, expressly took "judicial notice of . . . the limited availability of qualified attorneys for this type of proceedings [sic]" and determined that this special factor justified a higher fee. Under our standard of review, this Court must defer to the factual findings of the trial court.

(2) The trial court is deemed to be an expert on the necessity, reasonableness, and value of attorneys' fees and may award attorney's fees even without the aid of any evidence. The case law establishes that the trial court's expert knowledge and opinion alone is sufficient to support an award of attorney's fees. In holding that the trial court's award is not supported by competent and substantial evidence, the majority improperly disregards the expertise of the trial court and the presumptive evidentiary value thereof.

(3) When the expertise of the trial court is properly considered, along with the testimony of counsel, the record is clearly sufficient to support the trial court's award. The majority may disagree with the trial court's decision, but our standard of review provides no legitimate basis for this Court to substitute its judgment for that of the trial court.

(4) The dissent also disagrees with the apparent position taken by the majority that appellate practice is not an area of legal specialization that the trial court could rely upon in finding a special factor. While not every appeal may require such a specialist, a trial court familiar with the case could certainly find, under the circumstances of a particular case, that a specialist in appellate work was necessary and that this constituted a special factor warranting a rate above the \$75.00 per hour for appellate work.

Majority Opinion by Cynthia L. Martin, Judge
Dissenting Opinion by Joseph M. Ellis, Presiding Judge

June 25, 2013

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