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RICHARD L. ARMSTRONG AND CYNTHIA A. ARMSTRONG, APPELLANTS, V. COUNTY OF DIXON, APPELLEE.

808 N.W.2d 37

Filed October 28, 2011. No. S-10-235.

1. **Judgments: Statutes: Appeal and Error.** Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court.
2. **Attorney Fees: Appeal and Error.** On appeal, a trial court's decision awarding or denying attorney fees will be upheld absent an abuse of discretion.
3. **Courts: Eminent Domain: Attorney Fees: Appeal and Error.** Under Neb. Rev. Stat. § 76-726(2) (Reissue 2009), the court encompassed in the expression "the court having jurisdiction of a proceeding instituted by a condemnee under [Neb. Rev. Stat. §] 76-705 [(Reissue 2009)]" includes the district court to which an appeal is taken under Neb. Rev. Stat. § 76-715 (Reissue 2009). The provision in § 76-726(2) allowing an award of attorney fees when "(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected" authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b).
4. **Eminent Domain: Attorney Fees: Words and Phrases.** While Neb. Rev. Stat. § 76-720 (Reissue 2009), providing for the award of attorney fees upon the happening of certain events, is couched in terms of "may," in the absence of unusual and compelling reasons, the court "shall" enter such an award.
5. **Eminent Domain: Attorney Fees: Appeal and Error.** The results of any work done in connection with a condemnation proceeding which are relevant and material and properly introduced in evidence on appeal in the district court, whenever prepared, may be considered by the latter court in awarding reasonable attorney fees. The district court is not required to allow a fee for such services. On the other hand, the court should not be precluded from taking such factors into account in determining a reasonable fee.
6. **Eminent Domain: Attorney Fees.** In awarding attorney fees under Neb. Rev. Stat. § 76-720 (Reissue 2009), the proper factors to be considered by the court are the importance of and the result of the case, the difficulties thereof, the degree of professional skill demonstrated, the diligence and ability required and exercised, the experience and professional training of the attorney, the difficulty of the questions of fact and law that are raised, and the time and labor necessarily required in the performance of those duties.

Petition for further review from the Court of Appeals, INBODY, Chief Judge, and IRWIN and MOORE, Judges, on appeal thereto from the District Court for Dixon County, WILLIAM BINKARD, Judge. Judgment of Court of Appeals affirmed in part and in part reversed, and cause remanded with directions.

Jason S. Doele and Tracey L. Buettner, of Stratton, DeLay & Doele, P.C., L.L.O., for appellants.

Matthew V. Rusch and William F. Austin, of Erickson & Sederstrom, P.C., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF CASE

In this inverse condemnation proceeding, the district court for Dixon County entered judgment on a jury verdict in favor of Richard L. Armstrong and Cynthia A. Armstrong and against the County of Dixon for $4,049 and awarded the Armstrongs attorney fees in the amount of $5,600. The Armstrongs appealed the judgment to the Nebraska Court of Appeals, which affirmed the judgment. The Armstrongs petitioned for further review limited to the issue of attorney fees. We granted the Armstrongs' petition for further review. Because the Court of Appeals misconstrued the controlling statutes, we reverse that portion of the Court of Appeals' decision which affirmed the award of attorney fees, and we remand the cause to the Court of Appeals with directions to reverse the award of attorney fees in the district court and remand the cause to the district court with directions to award attorney fees in accordance with this opinion.

STATEMENT OF FACTS

In the summer of 2004, the County of Dixon (the County) began a road maintenance project on a county road that ran adjacent to the Armstrongs' property. The Armstrongs' tenant gave the County permission to do work on the property, including grading and removing fences and trees. After much of the work had been completed, Richard Armstrong instructed the tenant to order the County off the property.

The Armstrongs initially filed an action against the County in the district court on September 1, 2006. In the complaint, they alleged claims of negligence, constitutional inverse condemnation, and a violation of the Open Meetings Act. They sought

damages in excess of $65,000. After some discovery had been completed, in October 2007, the County made a settlement offer of $5,000. The Armstrongs declined the offer and did not make a counteroffer. The day before trial was scheduled to commence in July 2008, the Armstrongs dismissed the district court action, and the next week, they filed a new action stating a claim for statutory inverse condemnation in the county court for Dixon County. The proceeding filed in the county court gives rise to the current appeal.

In the county court, the Armstrongs brought an inverse condemnation proceeding under Neb. Rev. Stat. § 76-705 (Reissue 2009). In accordance with procedures set forth in the eminent domain statutes, Neb. Rev. Stat. §§ 76-701 through 76-726 (Reissue 2009), the county court appointed a board of appraisers. The appraisers found that the Armstrongs should be compensated $800 for the taking and damages. The Armstrongs filed a motion for attorney fees in the county court, relying on § 76-726(2). The county court determined that it lacked authority to award the requested attorney fees, thus effectively denying the motion. The county court explained its ruling, stating that under the controlling statutes, the county court could award reasonable attorney fees only "in specific limited circumstances" which "[were] not currently present . . . i.e. there has been no settlement effected; there has been no waiver of appeal by all interested parties, and the award assessed by the appraisers does not rise to the level of a 'court render[ed] judgment'."

Section 76-715 provides that "[e]ither condemner or condemnee may appeal from the assessment of damages by the appraisers to the district court . . . ." The Armstrongs appealed the appraisers' award to the district court under § 76-715. In the district court, they sought damages in the amount of $13,434 plus reasonable attorney fees. Prior to trial in the district court, the parties stipulated that discovery completed in connection with the prior dismissed district court action was relevant to the current district court proceeding and that therefore, the products of such discovery, including interrogatories, requests for admissions, requests for production of documents, and depositions, could be used in the current proceeding. After

trial, a jury awarded the Armstrongs damages of $4,049. The Armstrongs moved for attorney fees.

Before entering judgment on the jury award, the district court considered the Armstrongs' request for attorney fees. The Armstrongs presented evidence of fees incurred, inter alia, in the county court, in the district court appeal, and in the prior district court action. The court stated that it first needed to determine which Nebraska statute or statutes applied to the request. In this regard, the district court stated that "the statutes are not clear" and that "Nebraska appellate courts have not addressed § 76-726(2)."

The district court concluded that attorney fees denied in county court could not be awarded in district court, because the Armstrongs had failed to assign error to the denial, and that in any event, § 76-726(2) prevented an award of attorney fees by the district court sitting as an appellate court. The court noted that under the language of § 76-726(2), a condemnee could seek attorney fees incurred in a "'proceeding instituted by a condemnee under section 76-705.'" The district court reasoned that the "proceeding instituted under § 76-705" occurred in the county court, whereas the proceeding in the district court was an appeal from that proceeding but not a "'proceeding instituted by a condemnee under section 76-705'" for purposes of § 76-726(2). The court concluded that § 76-726(2) did not authorize an award of attorney fees in an appeal in the district court.

The district court determined, however, that fees could be sought by the Armstrongs in district court under § 76-720, which generally permits an award of attorney fees to a condemnee who obtains a judgment 15 percent greater than the appraisers' award. In making its award of attorney fees under § 76-720, the court considered the fees sought by the Armstrongs which had been incurred in connection with the prior district court action, because discovery related to the prior action was used in the present district court proceeding wherein the judgment exceeded the appraisers' award by greater than 15 percent. The court noted that in the prior action, the Armstrongs initially demanded $65,000, and that in October 2007, the County had made a settlement offer of $5,000, which the Armstrongs did

not accept. The court determined that because the damages awarded by the jury were less than the settlement offered by the County in the prior action, the Armstrongs' success "at trial was marginal at best." The district court stated that the "inverse condemnation statutes were not intended to permit a party to proceed through trial without regard for reasonable settlement offers." The district court therefore cut off the award of fees at the point of the declined settlement offer. With respect to the amount of attorney fees awarded, the court noted that the evidence submitted by the Armstrongs "indicate[d] attorney fees of approximately $5,600 at the time the $5,000 settlement offer was tendered by" the County. The court determined that this amount of attorney fees was appropriate and awarded the Armstrongs $5,600 for attorney fees. The court also awarded $7,815.48 for expert witness fees.

The Armstrongs appealed the district court judgment to the Court of Appeals and claimed that the court erred in various respects, including its award of attorney fees. In a memorandum opinion, the Court of Appeals rejected the Armstrongs' assignments of error and affirmed the district court's judgment. See *Armstrong v. County of Dixon*, No. A-10-235, 2011 WL 568688 (Neb. App. Feb. 15, 2011) (selected for posting to court Web site). The Court of Appeals' decision regarding attorney fees is the only issue upon which we granted further review.

With regard to the issue of attorney fees, the Court of Appeals considered the propriety of awarding attorney fees under both §§ 76-720 and 76-726(2). Regarding § 76-726(2) and the denial of fees in county court, it "concluded that § 76-726(2) does not provide a statutory basis for the district court to award attorney fees either not requested in the county court or for which the county court's denial was not properly preserved." *Armstrong v. County of Dixon*, 2011 WL 568688 at *8. The Court of Appeals noted that the Armstrongs did not appeal the county court's ruling denying their request for attorney fees, but instead requested fees directly from the district court. The Court of Appeals concluded that the Armstrongs failed to properly preserve the denial of attorney fees by the county court.

Regarding § 76-726(2), the Court of Appeals noted that the statute authorizes an award of fees incurred in the "court having jurisdiction of a proceeding instituted by a condemnee under § 76-705" and that § 76-705 authorizes an inverse condemnation action to be brought in county court rather than in district court. *Armstrong v. County of Dixon*, 2011 WL 568688 at *7. The Court of Appeals concluded that the "court having jurisdiction of a proceeding instituted by a condemnee under section 76-705" as provided for in § 76-726(2) is the county court in which the proceeding is initiated rather than the district court to which an appeal from an award by appraisers in such a proceeding may be taken. The Court of Appeals approved of the reasoning of the district court to the effect that the district court could not award attorney fees sought in county court and affirmed the denial of attorney fees based on § 76-726(2).

With respect to § 76-720, the Court of Appeals agreed with the district court that attorney fees were available under this statute and the facts of the case. The Court of Appeals considered but rejected the Armstrongs' argument to the effect that additional fees they had incurred for discovery in the prior district court action should have been awarded by the district court under § 76-720. The Court of Appeals cited *Prucka v. Papio Nat. Resources Dist.*, 206 Neb. 234, 292 N.W.2d 293 (1980), for the proposition that fees incurred prior to an appeal to the district court but related to the appeal may be *considered* in awarding a reasonable fee, but that the district court is *not required* to allow a fee for such services. *Armstrong v. County of Dixon, supra.* The Court of Appeals noted that the district court "devoted several pages of its judgment to analyzing and explaining its award of attorney fees" and that the district court had concluded that although the Armstrongs' success on appeal wherein they were awarded $4,049 compared to the $800 awarded by the appraisers was sufficient to trigger an award of fees under § 76-720, their success was "marginal at best" in light of their demand for damages of $65,000 in the prior district court action. *Armstrong v. County of Dixon*, 2011 WL 568688 at *8. The Court of Appeals noted that one factor the district court had considered was that in the prior action,

the County had made a settlement offer of $5,000 which exceeded the $4,049 judgment ultimately obtained in the district court. The Court of Appeals concluded that the district court's award of attorney fees of $5,600 was not an abuse of discretion and that the Armstrongs' assignment of error with respect to attorney fees was without merit. *Armstrong v. County of Dixon, supra.*

The Armstrongs petitioned for further review. We granted the petition for further review.

ASSIGNMENTS OF ERROR

The Armstrongs claim that the Court of Appeals erred when it (1) affirmed the district court's denial of an award of attorney fees under § 76-726(2) for fees incurred at the county court stage of the inverse condemnation proceedings and (2) concluded that the district court did not abuse its discretion under § 76-720 when it cut off the award of attorney fees incurred in the prior district court action at the point in time at which the County made a settlement offer.

STANDARDS OF REVIEW

[1] Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court. *State ex rel. Wagner v. Gilbane Bldg. Co.*, 280 Neb. 223, 786 N.W.2d 330 (2010).

[2] On appeal, a trial court's decision awarding or denying attorney fees will be upheld absent an abuse of discretion. *City of Gordon v. Ruse*, 268 Neb. 686, 687 N.W.2d 182 (2004).

ANALYSIS

Our consideration of this appeal on further review is limited to the issue of attorney fees. We find merit to the Armstrongs' assignments of error. We conclude that the Court of Appeals erred in its interpretation of § 76-726(2) and when it affirmed the district court's award of attorney fees under § 76-720. As explained below, § 76-726(2) authorized the district court to award the attorney fees incurred in county court and, although § 76-720 authorized consideration of the attorney fees in the prior dismissed district court action, the district court abused

its discretion when it failed to consider the full range of factors in awarding attorney fees attributable to the prior action.

Whether and to what extent the Armstrongs are entitled to an award of attorney fees in this inverse condemnation case are controlled by reference to §§ 76-720 and 76-726(2). Section 76-720 provides in relevant part:

> If an appeal is taken from the award of the appraisers by the condemnee and the amount of the final judgment is greater by fifteen percent than the amount of the award, or if appeal is taken by the condemner and the amount of the final judgment is not less than eighty-five percent of the award, . . . the court may in its discretion award to the condemnee a reasonable sum for the fees of his or her attorney and for fees necessarily incurred for not more than two expert witnesses.

Section 76-726(2) provides as follows:

> The court having jurisdiction of a proceeding instituted by a condemnee under section 76-705 shall award the condemnee such sum as will, in the opinion of the court, reimburse the condemnee for his or her reasonable costs, disbursements, and expenses, including reasonable attorney's, appraisal, and engineering fees, actually incurred as a result of the taking of or damage to the condemnee's property if (a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected.

The District Court Was the Court Having Jursidiction of a Proceeding Instituted by a Condemnee in These Inverse Condemnation Proceedings and Therefore Was Authorized to Award Attorney Fees Under § 76-726(2).

The Armstrongs claim that the Court of Appeals erred when it concluded that § 76-726(2) did not authorize the district court to award attorney fees incurred at the county court stage of these inverse condemnation proceedings. We agree with the Armstrongs that this conclusion was in error and that under the circumstances of this case wherein the district court rendered judgment, the district court was authorized to award attorney fees under § 76-726(2).

The Court of Appeals concluded that "[u]nder § 76-726(2), the court having jurisdiction of [a proceeding instituted by a condemnee under § 76-705] is the county court, not the district court." *Armstrong v. County of Dixon*, No. A-10-235, 2011 WL 568688 at *7 (Neb. App. Feb. 15, 2011) (selected for posting to court Web site). The Court of Appeals recognized that § 76-705 authorized a condemnee to institute a proceeding in county court, but reasoned that although the district court had jurisdiction of an appeal from such proceeding, the district court's appellate jurisdiction did not equate to the "court having jurisdiction" for purposes of awarding attorney fees under § 76-726(2). The Court of Appeals' reasoning misconstrues the structure of the eminent domain statutes and the proceedings set forth therein. As explained below, the appeal in district court taken under § 76-715 is part of the proceedings which are initiated by the condemnee in county court by filing under § 76-705. Under § 76-726(2), the authorization to award attorney fees to the "court having jurisdiction of a proceeding instituted by a condemnee under section 76-705" is given to the court where the matter may be resolved, which, in this case, was the district court. The court having jurisdiction for purposes of awarding attorney fees under § 76-726(2) in the instant case is the district court which rendered judgment.

Under § 76-705, a condemnee may file a petition for damages with "the county judge." Upon such filing, the county judge must appoint appraisers and the appraisers must assess damages and file a report thereof with the county court. §§ 76-706 through 76-710. Pursuant to § 76-715, "[e]ither condemner or condemnee may appeal from the assessment of damages by the appraisers to the district court of the county where the petition to initiate proceedings was filed."

Although labeled as an "appeal," the appeal authorized by § 76-715 is not a conventional civil appeal from county court to district court, which is governed by Neb. Rev. Stat. §§ 25-2728 through 25-2738 (Reissue 2008). Section 25-2728(2)(a) specifically provides that such sections shall not apply to, inter alia, "[a]ppeals in eminent domain proceedings as provided in sections 76-715 to 76-723." We have noted that an "appeal from an award of appraisers in an eminent domain proceeding

is sui generis," *Dawson v. Papio Nat. Resources Dist.*, 210 Neb. 100, 103, 313 N.W.2d 242, 245 (1981), and therefore, not necessarily subject to the general rules regarding an appeal. Under § 76-715, the condemnee or condemnor does not appeal an order or ruling of the county court; instead, the condemnee or condemnor appeals "from the assessment of damages by the appraisers." Unlike a conventional appeal, § 76-717 provides that "[t]he appeal shall be tried de novo in the district court" and that when both the condemnee and the condemnor appeal to the district court, "the *proceedings* shall be docketed in the district court as a single cause of action." (Emphasis supplied.) Given the statutes, the conclusions made by the lower courts, relying on conventional appellate jurisprudence to the effect that the district court could not award the Armstrongs attorney fees incurred in county court because they failed to preserve or assign the county court's denial of such fees as error, were erroneous.

Soon after the 1951 enactment of the eminent domain statutes, this court in *Jensen v. Omaha Public Power Dist.*, 159 Neb. 277, 283, 66 N.W.2d 591, 596 (1954), described the proceedings under the statutes as follows:

> The securing of an appraisal of damages by appraisers appointed by the county judge is an administrative act as distinguished from a judicial proceeding. The method of appeal is procedural only and contemplates a complete new trial upon pleadings to be filed as in the case of an appeal from the county court. The present appeal statute contemplates the filing of pleadings and the framing of issues for the first time in the judicial proceedings in the district court.

This court in *Jensen* also noted, "'On appeal to the district court from the appraisement of damages, if other issues than the question of damages are involved, they must be presented by proper pleadings.'" 159 Neb. at 277, 66 N.W.2d at 596 (quoting *Higgins v. Loup River Public Power Dist.*, 157 Neb. 652, 61 N.W.2d 213 (1953)). Therefore, issues related to matters such as an award of attorney fees are to be "presented by proper pleadings" in the district court, rather than by assignment of error from the county court.

After later amendments to the statutes, this court continued to describe the roles of the county court and the district court in eminent domain proceedings in a similar fashion:

> The proceeding before the appraisers is not a trial. No evidence is received and no record is made. The hearing is before the appraisers, not the county court. The function of the court in such cases is administrative only. Issues are framed for the first time in the District Court. . . . The Legislature did not intend to make the determination of the appraisers final.

Estate of Tetherow v. State, 193 Neb. 150, 156, 226 N.W.2d 116, 120 (1975) (citations omitted). We have also stated: "An appeal to the District Court from the award of the appraisers appointed by the county court contemplates the filing of pleadings and the framing of issues in a judicial proceeding in the District Court." *Zarybnicky v. County of Gage*, 196 Neb. 210, 216, 241 N.W.2d 834, 838 (1976).

[3] Under the scheme set up by the eminent domain statutes, the appeal to the district court is a part of the proceedings that are initiated when a condemnee files under § 76-705. We therefore conclude that under § 76-726(2), the court encompassed in the expression "[t]he court having jurisdiction of a proceeding instituted by a condemnee under section 76-705" includes the district court to which an appeal is taken under § 76-715. It follows, and we further conclude, that the provision in § 76-726(2) allowing an award of attorney fees when "(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected" authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b).

In the present case, the district court rendered a judgment in favor of the condemnees, the Armstrongs, based on the jury's verdict. The district court therefore was required to award attorney fees under § 76-726(2), which statute provides that the court "shall" award fees when it renders a judgment in favor of the condemnee. Under the language of § 76-726(2), the district court is required to make an award, but because the statute provides that the court must award "such sum as will, in the opinion of the court, reimburse the condemnee for his or

her reasonable costs, disbursements, and expenses," the dollar amount of the award is within the court's discretion. The contrary reading of § 76-726(2) by the lower courts was error.

In this appeal, the Armstrongs assert that attorney fees incurred in the county court stage of these eminent domain proceedings were authorized to be awarded by the district court under § 76-726(2). We agree with the Armstrongs. The Court of Appeals erred when it failed to reverse the district court's determination that it could not award attorney fees under § 76-726(2) for fees incurred in county court. The Court of Appeals should have remanded the cause to the district court to award "reasonable" attorney fees under § 76-726(2) for fees incurred in the county court.

The District Court Should Have Considered Appropriate Factors When Determining Reasonable Fees Under § 76-720 Rather Than Awarding Fees Only Until the Time of the Settlement Offer in the Prior Action.

The Armstrongs claim that the Court of Appeals erred when it affirmed the amount of the district court's award of attorney fees under § 76-720, because the district court awarded only the attorney fees incurred in the prior district court action until the time the County made a settlement offer. We agree that the district court abused its discretion in this respect. As explained below, the district court gave too much weight to the settlement offer in the prior action; instead, the court's focus should have been on how the discovery conducted in the prior action was used in the present action and what amount of fees was reasonable in light of such use, as well as the other factors described below.

[4] There was no dispute in this case that the district court was authorized to award attorney fees under § 76-720, because the damages awarded by the jury were greater by 15 percent than the amount of the appraisers' award. In *Prucka v. Papio Nat. Resources Dist.*, 206 Neb. 234, 236, 292 N.W.2d 293, 296 (1980), we said that while § 76-720 "is couched in terms of 'may,' we have held that, in the absence of unusual and compelling reasons, the court 'shall' enter such an award."

Therefore, because the conditions of § 76-720 were met, and given the absence of compelling reasons to the contrary, the district court was required to award attorney fees. The issue in this appeal is whether the district court abused its discretion in the amount of fees it awarded.

As an initial matter, we note that the district court properly did not award fees under § 76-720 related to the county court stage of these proceedings. Compare § 76-726(2). The court cited *Johnson v. Nebraska Public Power Dist.*, 187 Neb. 421, 191 N.W.2d 594 (1971), for the proposition that § 76-720 does not permit an award for fees incurred prior to the initiation of an appeal to the district court. With regard to the award of fees under § 76-720:

> We have long held that an award pursuant to § 76-720 is conditional and that the services of attorneys and expert witnesses must be related to the accomplishment of the conditions precedent stated in § 76-720, to wit: securing a final judgment on appeal greater by 15 percent than the amount of the award. See *Johnson v. Nebraska Public Power Dist.*, 187 Neb. 421, 191 N.W.2d 594 (1971). In *Johnson*, we stated that § 76-720 does not permit the award of attorney fees in eminent domain proceedings for services rendered prior to bringing an appeal in the district court.

In re Application of SID No. 384, 259 Neb. 351, 365, 609 N.W.2d 679, 689 (2000).

[5] Although fees at the county court stage were not recoverable under § 76-720, it was appropriate for the district court to consider the fees for work performed in the prior district court action which proved useful in the district court appeal under consideration. With regard to work done prior to the district court appeal but that was relevant to the appeal, we have held:

> [T]he results of any work done in connection with a condemnation proceeding which are relevant and material and properly introduced in evidence on appeal in the District Court, whenever prepared, may be considered by the latter court in awarding a reasonable fee. The District Court is not required to allow a fee for such services. On

> the other hand, the court should not be precluded from taking such factors into account in determining a reasonable fee.

Prucka v. Papio Nat. Resources Dist., 206 Neb. at 239, 292 N.W.2d at 297.

In the present case, the parties stipulated that the products of discovery in the previous district court action could be used in the present district court proceeding. It was therefore appropriate for the district court to consider such discovery, because on appeal, the Armstrongs received a judgment 15 percent greater than the appraisers' award, and the products of the discovery helped achieve that result. The district court was correct to consider such work, and the Court of Appeals was correct when it affirmed the district court's decision that it could consider the attorney fees the Armstrongs had incurred in the prior district court action. However, we conclude that because the district court abused its discretion by limiting the award of fees up to the point when the County made a settlement offer in the prior district court case, the Court of Appeals erred in affirming the amount of attorney fees awarded by the district court under § 76-720.

[6] In *Prucka v. Papio Nat. Resources Dist.*, 206 Neb. 234, 237, 292 N.W.2d 293, 296 (1980) (quoting *Jensen v. State*, 184 Neb. 802, 172 N.W.2d 607 (1969)), we stated that in awarding attorney fees under § 76-720, the proper factors to be considered by the court were:

> "the importance of and the result of the case, the difficulties thereof, the degree of professional skill demonstrated, the diligence and ability required and exercised, the experience and professional training of the attorney, the difficulty of the questions of fact and law that are raised, and the time and labor necessarily required in the performance of those duties."

These are the factors that the district court should have considered in determining a reasonable amount of attorney fees to award. The results of the prior district court action were not controlling, and therefore, it was not appropriate to award fees based simply on whether the attorney fees were incurred before or after the settlement offer by the County in that case. Instead,

the district court should have considered all of the fees incurred for the production of discovery that was effectively used to achieve the result in the present district court proceeding, and the court should have considered such fees in light of the factors set forth above.

Because the district court's award of $5,600 in attorney fees was based on the timing of the settlement offer in the prior action without due regard to other factors, the Court of Appeals should have concluded that the district court abused its discretion. The Court of Appeals erred when it failed to reverse the attorney fees awarded under § 76-720 and failed to remand the cause to the district court to consider the proper factors set forth above and to make a new award of attorney fees under § 76-720.

CONCLUSION

We conclude that the district court and the Court of Appeals erred in their interpretations of § 76-726(2) and that the statute authorized and required the district court to award attorney fees incurred in county court in these inverse condemnation proceedings. We further conclude that the district court abused its discretion when it based its award of attorney fees under § 76-720 on whether the fees were incurred before or after the County made its settlement offer in the prior district court action. The Court of Appeals should have reversed the district court's award of attorney fees and remanded the cause to the district court for consideration of a new award of attorney fees based on the evidence received at the hearing on the Armstrongs' motion for attorney fees and on the standards set forth herein.

This appeal is before us on a petition for further review. With the exception of the issue of attorney fees, the Armstrongs did not assign error to the Court of Appeals' decision, and therefore, those portions are affirmed. Based on our analysis above, we reverse that portion of the Court of Appeals' decision in which it affirmed the district court's award of attorney fees. We remand the cause to the Court of Appeals with directions to reverse the district court's award of attorney fees and to remand the cause to the district court with instructions to award

reasonable attorney fees under both §§ 76-720 and 76-726(2) in accordance with the standards set forth in this opinion.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

HEAVICAN, C.J., concurring.

I concur with the decision of the court, but write separately to emphasize what this court did and did not do in its opinion.

This court concluded the district court erred by finding that it lacked the ability to issue an award under Neb. Rev. Stat. § 76-726 (Reissue 2009) for various fees incurred before the county court. This court further concluded that the district court erred in finding that it was required to award fees under Neb. Rev. Stat. § 76-720 (Reissue 2009) for a time period that ceased as of the County's settlement offer.

What this court did not do was opine in any way on the amount of fees awarded below by the district court. Upon remand, the district court should consider an award of fees under both §§ 76-720 and 76-726. And in doing so, the district court is reminded that any amount that might be awarded should be considered anew—and as such, could be in an amount equal to, or higher or lower than, the amount awarded in this case.

FEDERATED SERVICE INSURANCE COMPANY, APPELLEE, V. ALLIANCE CONSTRUCTION, LLC, APPELLANT, AND SADLER LINE CONSTRUCTION, INC., AND DANNY O'NEALL, APPELLEES.

805 N.W.2d 468

Filed October 28, 2011. No. S-10-559.

1. **Insurance: Contracts: Appeal and Error.** The interpretation of an insurance policy presents a question of law that an appellate court decides independently of the trial court.
2. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the court granted the judgment and gives such party the benefit of all reasonable inferences deducible from the evidence.
3. **Summary Judgment: Final Orders: Appeal and Error.** When adverse parties have each moved for summary judgment and the trial court has sustained