

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.
WESLEY and JESSICA BIGNEY,
NOBERT BARCENA, BETTY
BIRNER, and PAMELA LEE HAINES,

Plaintiffs/Respondents,
v.

Supreme Court No. S-1-SC-40768
Ct. App. No. A-1-CA-40664

CITY OF RIO RANCHO, A MUNICIPAL
CORPORATION,

Defendant/Petitioner.

**CITY OF ALBUQUERQUE'S
AMICUS CURIAE BRIEF
IN SUPPORT OF DEFENDANT/PETITIONER RIO RANCHO**

**THE CITY OF ALBUQUERQUE
CITY ATTORNEY'S OFFICE**

Lauren Keefe
Devon P. King
One Civic Plaza NW
PO Box 2248
Albuquerque, NM 87103
lkeefe@cabq.gov
dking@cabq.gov

*Attorneys for Amicus Curiae
City of Albuquerque*

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STATEMENT REGARDING SUBMISSION OF AMICUS BRIEF

Pursuant to Rule 12-320(A) and (D) NMRA, Amicus, City of Albuquerque (“City” or “Amicus”), hereby submits its brief pursuant to its contemporaneously filed Motion for Leave to File Amicus Brief. This brief supports the Brief in Chief filed by Defendant/Petitioner, City of Rio Rancho. Pursuant to 12-320(D)(1), Amicus filed a notice with the Court on May 2, 2025, notifying all Parties of its intention to file a motion and brief in this matter.

/s/ Devon P. King
Devon P. King

STATEMENT OF COMPLIANCE

Pursuant to the New Mexico Rules of Appellate Procedure, Amicus hereby certifies that the following brief complies with the limitations set forth in Rules 12-305 NMRA and 12-318 NMRA. The brief was prepared using a proportionately spaced type-style or typeface (Times New Roman, 14 font) and contains 2,484 words. The word count was obtained through Microsoft Word 2021.

/s/ Devon P. King _____
Devon P. King

I. INTEREST OF AMICUS CURIAE

Municipalities have a duty and responsibility to their residents to continually be improving the landscape they govern, whether by regulations, construction, or development. As a result, there is a constant risk of claims of inverse condemnation underlying these actions, especially for a municipality the size of Amicus, the City of Albuquerque.

Amicus is constantly developing land, conducting construction on roadways, buildings, and public projects, and working to improve the quality of life for its residents. When it is confronted with claims for inverse condemnation, Amicus must carefully evaluate the facts and application of law to create a litigation strategy to ensure taxpayer money is spent appropriately. This frequently means that Amicus must weigh the risks of defending a matter all the way to trial or settling the case early to reduce the possible exposure. The Court of Appeals decision creates an overbroad, untenable application of attorney fee awards not supported by the language of the statute, forcing Amicus and other municipalities to now consider the cost of attorney's fees in its evaluation. Amicus' brief provides this Court with a picture of the broader implications of the Appeal Court ruling.

II. ARGUMENT

This brief is submitted in support of Defendant/Petitioner Rio Rancho's position that the District Court should not have misapplied the condemnation statute to Plaintiff's claim for attorney's fees, that the standards established by the court in

Landavazo v. Sanchez, 1990-NMSC-114, 111 N.M. 137, to apply attorney’s fees in inverse condemnation matters should be reversed, and the District Court erred in ordering payment of all attorney’s fees by Defendant/Petitioner Rio Rancho despite the presence of a co-defendant.¹ Amicus fully supports and incorporates herein the arguments and discussions contained in Defendant/Petitioner Rio Rancho’s Brief in Chief.

A. THE DISTRICT COURT ERRED IN AWARDING ATTORNEYS’ FEES TO PLAINTIFFS WHEN SUCH AWARD IS NOT AUTHORIZED UNDER THE INVERSE CONDEMNATION STATUTE.

Fundamentally, local governments should not be liable for attorney’s fees when the cause of action does not authorize an award of those fees, and an award of attorney’s fees should not have been authorized in this case. New Mexico courts have held that it was “error for the district court to use an inapplicable statute as a basis for awarding any attorney fees.” *Dollens v. Wells Fargo Bank, N.A.*, 2015-NMCA-096, ¶ 25, (citing *Dean v. Brizuela*, 2010–NMCA–076, ¶¶ 16–17, 148 N.M. 548). Here, the court erred in applying a different, and inapplicable, statute to this matter to grant the award. As argued by Defendant/Petitioner Rio Rancho, this case

¹ Devon King, Deputy City Attorney, has authored and filed this brief on behalf of amicus curiae. No counsel for any party authored this brief in whole or in part. No counsel or party has made a monetary contribution intended to fund the preparation or submission of this brief.

is a clear inverse condemnation proceeding, not condemnation, and the fee award in question is based on misinterpretation of a statute.

While *Moongate Water Co., Inc. v. City of Las Cruces*, 2014-NMCA-075, is distinguishable because it addresses costs instead of attorney's fees, it provides clear guidance on the strict interpretations of statutory language, specifically the statutes that are at issue here. The Court provides guidance in construing a statute, requiring a Court to, "determine and give effect to the Legislature's intent," which is determined by "classic canons of statutory construction," looking "first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended." *Id.* ¶ 5 (citing *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 9, 146 N.M. 24, internal quotes omitted). The Court found, "We will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions." *Moongate*, 2014-NMCA-075, ¶ 5 (citing *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401).

Section 42A-1-29 NMRA explicitly addresses which damages are available for an inverse condemnation action: "the value thereof or the damage thereto at the time the property is or was taken or damaged, with ten percent per year interest, to

the date such just compensation is made, in an action to be brought under and governed by the Rules of Civil Procedure for the District Courts of this state.” The clear and unambiguous reading of this statute does not permit a cross-statutory interpretation that incorporates the attorneys’ fees awards from Section 42A-1-25 NMRA.

This lends itself directly to the issues before this Court – by misapplying the attorney’s fee award from the condemnation statute to the inverse condemnation claims at issue, the District Court improperly blended two very separate and distinct actions, reading language into the inverse condemnation statute that is not plainly written. As Amicus evaluates its liability in litigation, it is assessing the potential damages if it does not prevail at trial. When such damages are not provided for under the cause of action, the monetary impact can be significant. Amicus, much like other local governments, relies on Courts to construe the plain meaning of statutory language when awarding monetary damages to plaintiffs that will be paid by taxpayer money. This misapplication of the law has the opportunity to create severe ramifications for inverse condemnation causes of action in the future.

B. THE *LANDAVAZO* RULING CREATED A CONFUSING AND UNWORKABLE STANDARD THAT SHOULD BE REVERSED.

Amicus supports Defendant/Petitioner Rio Rancho’s argument requesting *Landavazo*, 1990-NMSC-114, be reversed and incorporates its arguments herein.

As argued above, the plain language of Section 42A-1-29 does not permit the award of attorney's fees; thus, *Landavazo* should never have blurred the lines of plain language statutory interpretation and allowed it in the first place. However, by making the distinct differences between condemnations and inverse condemnations far more malleable, *Landavazo* created a confusing and unworkable standard reflected in the rulings underlying this case. Even the Court in *Primetime Hosp., Inc. v. City of Albuquerque*, 2007-NMCA-129, ¶ 49, 142 N.M. 663, 675–76, tried to clarify and make sense of *Landavazo*'s ruling, ultimately declining to expand it to find that attorney fees are presumptively appropriate in all inverse condemnation cases.

Moongate, while again is distinguishable from the present matter due to its evaluation of costs in inverse condemnations versus attorney's fees, provides a clarification of the differences between condemnation and inverse condemnation actions. 2014-NMCA-075. It reasoned that while “inverse condemnation actions (initiated by a condemnee) and direct condemnation actions (initiated by the condemnor) both implement the constitutional rule that private property may not be taken or damaged for public use without just compensation, the procedures governing the types of proceedings are different and **the terms are not interchangeable.**” *Id.* ¶ 12 (emphasis added). It continues, stating, “it is clear that the Legislature does not equate inverse condemnation actions and direct

condemnation actions as synonymous for all purposes.” *Id.* The specific statutory language and recognition by the Court that the terms and actions are not interchangeable or synonymous supports a finding that the Legislature did **not** intend for such significant overlap between these two distinct causes of action. This undermines the very premise *Landavazo* is based on.

The Court of Appeals’ decision here to expand the *Landavazo* decision to apply to all inverse condemnation matters further illustrates the need for this Court to evaluate whether the concurrence in *Landavazo* should be reversed. There is no basis for attorney’s fees to be awarded in any inverse condemnation matter, and allowing this ruling to stand would have significant consequences on Amicus and other New Mexico municipalities.

C. THE DISTRICT COURT ERRED IN ORDERING DEFENDANT/PETITIONER RIO RANCHO TO PAY ALL ATTORNEY’S FEES, INCLUDING THOSE INCURRED BY PLAINTIFFS’ ACTIONS AGAINST PRIVATE CO-DEFENDANT HGT.

An arbitrary award of all attorney fees in its entirety to one defendant (the city) and no fees assessed on the other defendant (a private company) establishes a standard that future plaintiffs (and private defendants) can use to unjustly divert fees onto a municipality. “While an award of attorney fees is discretionary, the exercise of that discretion must be reasonable when measured against objective standards and criteria.” *Autovest, L.L.C. v. Agosto*, 2021-NMCA-053, ¶ 24 (*citing Rio Grande Sun*

v. Jemez Mountains Pub. Sch. Dist., 2012-NMCA-091, ¶ 13). The District Court’s assignment of all fees to Defendant/Petitioner Rio Rancho are not based in objective standards or criteria.

By requiring Defendant/Petitioner Rio Rancho to pay *all* attorney’s fees, including those that are specifically tied to Plaintiff’s litigation with Defendant HGT, and Defendant HGT not having to pay any, the District Court created an unfair imbalance that would likely not arise if Defendant/Petitioner Rio Rancho was not named as a co-Defendant. Defendant HGT benefitted from not having to pay any fees and Defendant/Petitioner Rio Rancho suffered by having to pay them all.

Plaintiff’s assertion that their incurred attorney’s fees were in “general trial time” and their time with the two Defendants was so “inextricably intertwined” so that they could not distinguish their time should not have been permitted by the District Court. New Mexico courts have recognized that in certain cases it could be difficult or impossible to segregate the work performed for an attorney fee award, but have held that the burden of showing this to the trial court is “with the attorney who seeks the attorney fee award.” *Dean*, 2010-NMCA-076, ¶ 18 (internal citation omitted). Plaintiffs have a responsibility to appropriately separate the fees associated with each individual Defendant in order to recover; Plaintiffs did not meet the burden of showing that the fees for each Defendant were inextricably intertwined. Even if Plaintiffs had shown that the fees were inextricably intertwined,

the District Court should have reasonably split the fees between the co-Defendants instead of dumping them all on the municipality and forcing it to cover the fees on behalf of a private company.

A municipality cannot shoulder the burden of an entire award of attorney fees merely because it is a municipality. Amicus has a fiscal responsibility to its residents and taxpayers; the fees it pays in litigation come from their money. This ruling is unreasonable and places an unfair burden on a local government as a co-defendant.

III. CONCLUSION

The Court should reverse the Court of Appeals' decision in this case. The clear statutory interpretation of the condemnation and inverse condemnation statutes does not support any award of attorney's fees in an inverse condemnation matter. The Legislature's intent is reflected in the language of these statutes and its objective to separate condemnations and inverse condemnations as two separate causes of action. The *Landavazo* ruling is contrary to this interpretation and its application in this case by the Court of Appeals goes even further beyond the limitations of the plain language.

The rulings in *Landavazo* and from the Court of Appeals here have created a dangerous precedent to allow a court to merely bypass the statutory language to punish a government defendant. Local governments perform important functions for their residents, and inverse condemnation actions are a very real risk in construction

and development. The Court of Appeals' ruling, and the District Court's decision to order Defendant/Petitioner Rio Rancho to pay all attorneys' fees despite another Defendant being present, goes beyond any reasonable standards and should be reversed. The prevailing party must bear the burden of accurately tracking their time throughout litigation, whether it be with multiple defendants or causes of action, and cannot merely dump the entirety of the fees on the defendant that is perceived to be wealthier.

For the reasons set forth herein, Amicus respectfully requests the Court of Appeals' decision be reversed.

Respectfully Submitted:

CITY OF ALBUQUERQUE
Lauren Keefe, City Attorney

/s/Devon P. King

Devon P. King
Deputy City Attorney
One Civic Plaza NW
P.O. Box 2248
Albuquerque, NM 87102
Phone: (505) 768-4500
E-mail: dking@cabq.gov
lkeefe@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2025, a true and correct copy of the foregoing was filed electronically and served to all counsel of record through the New Mexico court's e-filing/service system.

/s/ Devon P. King
Devon P. King