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## **Court of appeals rules against county in bondsman fee case**

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**By Donna Fielder / Staff Writer**

The 2nd Court of Appeals has ruled against Denton County in a suit filed by Vic and Eydie Burgess concerning a \$60 fee charged by county and district clerks every time they mail a notification to a bail bondsman that a client has failed to show up for court.

That could eventually cost the county upwards of \$360,000, but county officials say it's much too soon to consider that because the suit has yet to be tried on its full merits.

In a decision about appeals filed by the county and the Burgesses, the court overruled the county's issues and sustained the Burgesses'.

The county appealed as to the jurisdiction of the issue, saying that the Burgesses were suing in the wrong court. The appeals court overruled that.

The Burgesses argued that visiting Judge John Narsutis should not have denied their request for a temporary injunction that would have saved them from paying the fee until a final decision was made. The court agreed that the trial judge abused his discretion by denying the temporary injunction and reversed his decision.

That means that the appeals court reversed the trial court's original order denying a temporary injunction and sent it back with instructions to grant their motion for a temporary injunction.

That appeals decision was hailed by Burgess attorney Richard Gladden as the first step in the county's being forced to cease charging the fee. It also means the county will be liable for paying back hundreds of thousands of dollars to county bail bond companies, he said.

"The court has ruled that there is no evidence to support a finding that the Commissioners Court ever approved a \$60 fee for service for process by certified mail," Gladden said. "Consequently, for all practical purposes, the case is over and the Burgesses have prevailed. I fully expect the district court will enter a final judgment in the Burgesses' favor within 60 days."

But county officials say not so fast.

"It's not over yet," County Judge Mary Horn said Monday. She referred further comment to county lawyers.

"My understanding is that yes, the trial court must grant a temporary injunction, but that doesn't resolve the issues," First Assistant District Attorney Jamie Beck said. "There will be a mandate to grant the temporary injunction, but the case doesn't end there. I think they were saying the evidence before them didn't prove or deny the merits. The burden will be on us to bring forward evidence that they did set the fee."

Bail bond companies guarantee bail for their clients, promising that the clients will show up for court or the bail bondsmen will pay the full amount of the bail. That puts the onus on them to make sure the clients show up and to find them if they don't.

Every time a defendant who is free on bail fails to show up on the appointed date, the district or county clerk notifies the bondsman. Sometimes, constables make notifications in person. Other times, the notification is sent by certified mail.

The clerks charge a state-mandated \$8 fee for that. They also charge a \$60 fee.

The Burgesses filed suit against the county, asserting that the county never voted to charge the \$60 fee for mail service and that it is far beyond necessary costs to the county for sending the letter.

In an August 2010 hearing, Narsutis ruled that he had no authority to overrule the desires of the county commissioners.

Testifying in that hearing were District Clerk Sherri Adelstein, Constable Jim Dotson and other county officials.

Dotson testified that he is a member of an advisory committee for the commissioners that sets fees for notifications in person by a constable. He said he did not believe that fee list given to commissioners for their consideration even contained a fee for certified mail.

The committee's work was just for personal citation by a constable, he testified.

Gladden played for the court a tape of the commissioners' proceedings during which the fee list was agreed on. There was no discussion and no consideration, and the entire vote lasted less than a minute.

In the opinion, Narsutis noted that Adelstein testified that it takes a clerk three to five minutes to prepare a citation for mailing; that it costs about 80 cents per letter to use a special computer program that produces the letters; and that postage costs as little as \$5 and as much as \$9.

Gladden asked her who told her to charge \$60.

"Nobody," Adelstein said.

The judge's opinion appeared to say that reasonable costs should include capital costs, personnel costs or other overhead costs, the wages and benefits paid to employees, the cost of equipment, software, communications, transportation, filing and storage associated with the preparation and service of citation by certified mail.

"There is no requirement that government be efficient and I take judicial notice as well of the fact that inefficiency is endemic in government," the judge wrote.

The appeals court decision stated that the state Legislature has delegated to commissioners the task of setting the fees for constables for serving the citations. The state has directed the district clerk to follow those fee schedules as well.

The opinion states that the fees must be reasonable and may not be higher than is necessary to pay the expenses of providing the service.

There was no evidence in anything brought to the appeals court, according to the ruling, that commissioners intended to include service by mail in their approval of the fee for service by a constable.

Dotson testified that he did not recall the mail service being part of the list approved by commissioners, and the video of the vote did not show any evidence of that, according to the ruling.

Since there was no evidence that a fee was set, the court ruled that the fee should be what was charged in 1981. There was no evidence of a fee being charged at that time, according to the ruling.

If the Burgesses paid the fee, they likely would not be able to recover it if the final decision were in their favor. If they did not pay the fee, the Burgesses could lose their license, according to the ruling.

So they should pay the fee into a special registry in the trial court to be held until a final decision was made on the merits of the case.

“But we have held that, based on the record before us, the Commissioners Court has not set any such fee,” the opinion states.

Gladden says that means the trial court would be acting in a frivolous manner if the judge ruled against the Burgesses, since the appeals court made its opinion plain. But the appeals court cannot rule on the merits of the case, and that must take place in the original court in Denton County.

There will be further evidence at that time, Beck said.

Gladden said the decision will directly affect only the Burgesses. However, in the event of a victory by the Burgesses, any other bondsman in the county could sue to regain the money that company paid, as well as any amount beyond the fee eventually ruled on by the judge.

Gladden said the statute of limitations means the suits for reimbursement could go back only two years.

But in the past two years, he estimates, there have been 4,000 such notifications in misdemeanor courts and 2,000 such notifications in felony courts. Those 6,000 cases, times the \$60 fee if it were refunded, would cost the county \$360,000.

“And that doesn’t include the lawyers’ fees,” Gladden said. “Mine are upward from \$20,000, and all the other companies that sued would ask for attorneys’ fees as well.”

Beck said she doesn’t believe the case will finish within 60 days. The system doesn’t move that fast, she said. And the appeals court ruled only on a temporary injunction.

“The key word here being temporary,” she said. “The case hasn’t been heard on its full merits yet.”