

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-8807  
Summary Calendar

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ELIZABETH STINSON, ET AL.,

Plaintiffs-Appellees,  
Cross-Appellants,

VERSUS

CITY OF TAYLOR, ET AL.,

Defendants,

CITY OF TAYLOR, TEXAS, STAFFORD  
BENGSTON and KENNETH TAYLOR,

Defendants-Appellants,  
Cross-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(A-92-CV-564)

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(September 14, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellants City of Taylor, Texas; Stafford Bengston, Chief of Police; and Kenneth Taylor, City Manager appeal from a jury verdict that awarded damages against them under 42 U.S.C. § 1983 for a civil rights violation. Appellees Elizabeth Stinson and Randall

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Massey cross appeal the district court's reduction of their request for attorney's fees. We affirm.

#### FACTS

City of Taylor police officers arrested Ms. Stinson and cited Mr. Massey for violation of the City's curfew ordinance. At the time, the two were standing on a sidewalk outside a dance club in the City after 11 p.m. They filed suit under 42 U.S.C. § 1983 against the City and its officials alleging that enforcement of the ordinance violated their constitutional rights.<sup>2</sup> The court held the ordinance unconstitutional at a hearing for a temporary restraining order, but denied injunctive relief because the City had repealed the ordinance. At trial, the jury awarded \$12,500 damages to Ms. Stinson and \$1,000 damages to Mr. Massey.<sup>3</sup> The court awarded Appellees \$15,000 in attorney's fees. Defendants appeal the verdict and Plaintiffs cross appeal the amount of the attorney's fees.

#### DISCUSSION

Appellants first contend that the trial court's jury instructions should have included instructions on liability and causation. The trial court has broad discretion to formulate jury instructions, "as long as they are fundamentally accurate and not

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<sup>2</sup> Plaintiffs also named additional defendants and sought relief under other federal as well as state law causes of action. Neither these defendants nor the other claims were part of the case when the court presented it to the jury.

<sup>3</sup> The jury did not award damages to a third plaintiff, and the court entered judgment as a matter of law against a fourth plaintiff.

misleading." Gates v. Shell Offshore, Inc., 881 F.2d 215, 218 (5th Cir. 1989), cert. denied, 494 U.S. 1017 (1990). The district court's pre-trial holding that the ordinance was unconstitutional allowed the court to simplify its instructions to the jury.<sup>4</sup> The court asked the jury to award the amount of damages Ms. Stinson suffered as a result of her arrest. Thus, the instructions required the jury to find causation although not as a separate element. We determine that the jury instructions were accurate and not misleading.<sup>5</sup>

Appellants also contend that Appellees' closing argument to the jury constituted prejudicial error. The trial court may allow counsel wide latitude in closing argument. Schleunes v. American Casualty Co., 528 F.2d 634, 638 (5th Cir. 1976). Appellees' counsel suggested that the jury punish the City for enforcing its unconstitutional law. In response to an objection, the court cautioned the jury to award only compensatory damages. We conclude that the trial court's instruction effectively cured any prejudice attributable to Appellees' argument.

Appellants also question the sufficiency of the evidence, but fail to argue the issue in their opening brief. A question posed for appellate review but not argued in the opening brief is abandoned. Harris v. Plastics Mfr. Co., 617 F.2d 438, 440 (5th

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<sup>4</sup> The unconstitutionality of the ordinance is not at issue on appeal.

<sup>5</sup> Appellants also argue that Appellees must show a widespread unconstitutional policy or custom for liability under 42 U.S.C. § 1983. The unconstitutionality of the ordinance renders such a showing unnecessary.

Cir. 1980); United Paperworkers Int'l Union v. Champion Int'l Corp., 908 F.2d 1252, 1255 (5th Cir. 1990).

In their cross appeal, Appellees contend that the trial court improperly reduced the award of attorney's fees. We review for abuse of discretion. Fernandes v. Limmer, 663 F.2d 619, 637 (5th Cir. Unit A Dec. 1981), cert. denied, 458 U.S. 1124 (1982). The district court calculated the appropriate fees using reasonable estimates of the time required to prepare the case and the prevailing hourly rate.<sup>6</sup> We conclude that the trial court did not abuse its discretion.

For the foregoing reasons, the decision of the trial court is  
AFFIRMED.

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<sup>6</sup> The court found Appellees' request for 521.65 hours at \$250 per hour to be grossly excessive (\$132,973.75 including paralegal fees). It instead awarded \$15,000 on the basis of 100 hours at \$150 per hour.