

# IN THE SUPREME COURT OF TEXAS

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No. 05-0236

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THE STATE OF TEXAS, PETITIONER,

v.

J. GRADY BROWN, JR., RESPONDENT

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS

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JUSTICE O'NEILL, concurring in part and dissenting in part.

I agree fully with the Court's conclusion that Property Code sections 21.019 and 21.0195 do not authorize the award of all fees and expenses under these circumstances. I dissent only because I would remand the case, rather than render judgment, so that the trial court may consider imposing any sanctions available under the Texas Rules of Civil Procedure. *See, e.g.*, TEX. R. CIV. P. 13 (authorizing sanctions when a pleading is groundless or not brought in good faith); TEX. R. CIV. P. 70 (permitting a trial court to require a party whose amended or supplemental pleading surprises and prejudices another party to pay the additional costs and expenses incurred by the surprised party as a result of the surprise); TEX. R. CIV. P. 215 (providing for sanctions when a party abuses or fails to comply with discovery proceedings and requests).

As the Court notes, we recently held that such sanctions against a condemning authority are available because Property Code section 21.018(b) stipulates that condemnation trials are to be

conducted in the same manner as any other civil trial. *PR Invs. & Specialty Retailers, Inc. v. Texas*, 251 S.W.3d 472, 480 (Tex. 2008). As we noted in *PR Investments*, appropriate sanctions under the Rules of Civil Procedure may not constitute the entirety of the fees and costs; for example, perhaps only the costs associated with the untimeliness of the amendment to the petition are available here. Because *PR Investments* was decided after the trial court's decision, in the interests of justice and fairness, I would remand to permit the trial court to consider sanctions under the Rules of Civil Procedure in light of *PR Investments*.

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Harriet O'Neill  
Justice

**OPINION DELIVERED:** August 29, 2008