

LITIGATOR of the WEEK

Making the Case for Mental Anguish Damages

James L. Reed Jr. initially saw a hurdle in his client Troy Perry's whistle-blower suit.

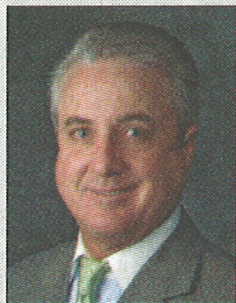
"It was a case that had very little in the way of hard damages," says Reed, a Looper Reed & McGraw shareholder in Houston.

But on May 3 in *Troy Perry v. Alief Independent School District, et al.*, the 215th District Court in Houston issued a final judgment of more than \$900,000, including \$468,000 in attorneys' fees and \$120,000 in pre-judgment interest.

Reed represents Perry, a former peace officer for the AISD. In his Oct. 28, 2011, amended petition, Perry alleged the school district, Dan Turner, his former captain, and Henry Bonaparte, his former sergeant, had wrongfully terminated him when he attempted to communicate with appropriate officials about gangs, as well as when he tried to report that school officials had ripped up a traffic ticket he had written to a teacher. Perry alleged the defendants violated his due process and free speech rights and his rights under the Texas Whistleblower Act.

In their Oct. 7, 2011, answers, the defendants denied the allegations. AISD alleged Perry had not exhausted his administrative remedies. Turner and Bonaparte asserted that they were entitled to official and professional immunity.

After a four-day trial and five hours of deliberations, the jury returned its verdict on Nov. 14, 2011. It decided Perry reported the destruction of the ticket in good faith and the reporting of the



James L. Reed Jr.

ticket was the cause of his termination. The jury found that Turner, Bonaparte and another school official who was not named as a defendant had violated Perry's due process and free speech rights, according to the jury charge.

The jury awarded Perry \$62,500 in actual damages, \$325,000 in mental anguish damages, and \$468,000 in attorneys' fees. The final judgment also included \$120,000 in pre-judgment interest.

Shortly after he was terminated from AISD, Perry found a well-paying job, Reed says. Therefore, to win a large dollar amount, Reed says he had to persuade the jury that Perry had suffered mental anguish, not just economic damages.

Reed says he did that by playing for the jurors a videotaped deposition of a defense expert witness. The witness had suffered his own alleged wrongful termination and provided an excellent account of how much anguish such an event may cause, Reed says.

"I proved as much mental anguish as I could, which is difficult in this day of tort reform," Reed says.

J. Erik Nichols, a partner in Houston's Rogers Morris & Grover who represents the school district, Turner and Bonaparte, did not return two telephone calls seeking comment.

— MIRIAM ROZEN

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WEB EXTRA

Documents related to *Perry v. Alief Independent School District, et al.* are online at www.texaslawyer.com. Look for the links within the online version of this article.