

ORIGINAL

NOT FOR OFFICIAL PUBLICATION



IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

FEB 12 2016

MICHAEL S. RICHIE
CLERK

WARD LEE & COATS, P.L.C.,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 CITY OF CLAREMORE; SARAH)
 SHARP, CITY CLERK,)
)
 Defendants/Appellees.)

Case No. 113,173

APPEAL FROM THE DISTRICT COURT
OF ROGERS COUNTY, OKLAHOMA

HONORABLE SHEILA CONDREN, JUDGE

REVERSED AND REMANDED

Rec'd (date)	2/12/16
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Publish	yes <input checked="" type="checkbox"/> no <input checked="" type="checkbox"/>

Stephen G. Fabian, Jr.,
 FABIAN & ASSOCIATES, INC. P.C.,
 Oklahoma City, Oklahoma,
 and
 Josh D. Lee,
 WARD LEE & COATS, P.L.C.,
 Vinita, Oklahoma,

For Plaintiff/Appellant,

Matthew P. Cyran,
 Jerry A. Richardson,
 ROSENSTEIN, FIST & RINGOLD,
 Tulsa, Oklahoma,

For Defendants/Appellees.

OPINION BY ROBERT D. BELL, PRESIDING JUDGE:

¶1 Plaintiff/Appellant, the law firm of Ward Lee & Coats, P.L.C., appeals from the trial court's order denying the firm's petition for declaratory relief brought pursuant to the Oklahoma Open Records Act, 51 O.S. 2011 §24A.1 *et seq.* (Act). For the reasons set forth below, we reverse and remand for further proceedings.

¶2 This is the second Open Records Act litigation between these parties and the second judgment to be reversed by this Court. In *Ward & Lee, P.L.C. v. City of Claremore*, 2014 OK CIV APP 1, 316 P.3d 225 (*Ward I*), this Court held the City of Claremore violated the Act by refusing to provide Appellant law firm with a video tape of a DUI arrest. City was represented in the litigation by Matthew J. Ballard, who was the Claremore City Attorney and a lawyer with the firm of Rosenstein, Fist & Ringold.

¶3 On remand for determination of reasonable attorney fees, Defendant/Appellee City objected to the hourly fees sought by Appellant's attorneys and alleged the appropriate hourly rates were far lower in the relevant vicinity. In response, Appellant made an Open Records Act Request on January 20, 2014, asking City for records detailing: (1) all expenditures made by City relating to the underlying law suit; (2) copies of all time records received by City for legal services relating to the underlying suit, including billing records submitted by Rosenstein, Fist & Ringold;

and (3) copies of all checks, vouchers or other forms of payment to any and all law firms and attorneys for representation or advice relating to the underlying suit. Appellant's request was sent to Defendant/Appellee Sarah Sharp, the Claremore City Clerk. Ms. Sharp forwarded the request to Mr. Ballard, who thereafter purportedly verbally advised an attorney for Appellant the amount of attorney fees incurred by City in the underlying lawsuit, the number of hours billed to City and the hourly billing rate.

¶4 On February 13, 2014, Appellant submitted to City a second Open Records Act Request seeking the same documents and also seeking copies of any contracts, agreements or memorandum of understandings between City and Ballard and/or Rosenstein, Fist & Ringold for legal services provided to City. Again, the City Clerk forwarded the request to Ballard. In a subsequent telephone call, Ballard confirmed with Josh Lee, a partner in Appellant law firm, the specific records Appellant sought. Ballard advised Lee that he would send the records after redacting privileged information. Lee informed Ballard that Appellant wanted the documents regardless of whether the attorney fee issue was settled prior to the March 26, 2014, fee hearing.

¶5 On March 24, 2014, Appellant filed the instant declaratory relief action alleging City violated the Open Records Act by failing to comply with Appellant's two requests. The attorney fee hearing was held on March 26, 2014. At the

conclusion of the hearing, Ballard hand delivered to Lee copies of billing statements Ballard and his law firm had originally submitted to City and a copy of the engagement contract between Ballard and City. At the subsequent bench trial in the instant case, Ballard testified he obtained the subject records from the billing clerk in his law firm and that they were identical to City's records. The City Clerk never saw the records given to Mr. Lee and could not verify their accuracy. Appellant maintains *City* has never produced any of the requested documents.

¶6 The trial court held City did not violate the Open Records Act. Specifically, the trial court concluded:

Although the records produced were duplicate originals, because of the type of documents sought (City Attorney billing statements and contracts originally generated by the City Attorney and maintained at the City Attorney's law firm), as well as the fact that the City Attorney authenticated these documents as exact duplicates of the documents given to and maintained by the City of Claremore, the Court finds the records produced constitute public records of the City of Claremore.

The trial court also held any delay in producing the documents was not unreasonable because the language of the requests was broad, the format for production of the documents was not identified and some documents had to be redacted. From said judgment, Appellant appeals.

¶7 “A trial court’s decision in a declaratory judgment action is ‘reviewable in the same manner as other judgments.’” *Ward I*, 2014 OK CIV APP 1, ¶8, quoting 12 O.S. 2011 §1654.

The appellate court has the plenary, independent, and nondeferential authority to reexamine a trial court’s legal rulings. Matters involving legislative intent present questions of law which are examined independently and without deference to the trial court’s ruling. The trial court’s findings of fact will not be disturbed unless they appear clearly to be against the weight of the evidence. Thus, in actions of equitable cognizance, the judgment made by the trial court will be reversed if it is clearly contrary to the weight of the evidence or contrary to accepted principles of equity or rules of law.

Pacificare of Okla. v. Oklahoma Health Care Auth. Bd., 2001 OK CIV APP 73, ¶13, 25 P.3d 930 (citations omitted).

¶8 All parties to the present case agree that Appellant is entitled to the records it sought from City under the Open Records Act.¹ At issue is whether the records given to Appellant satisfied the Act’s mandate. We hold that they did not.

¶9 “The purpose of [the Open Records A]ct is to ensure and facilitate the public’s right of access to and review of government records so they may efficiently and

¹ Title 51 O.S. 2011 §24A.4 states in relevant part:

[E]very public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, . . .”

intelligently exercise their inherent political power.” 51 O.S. 2011 §24A.2. Subsection 24A.5(5) further provides, “A public body must provide prompt, reasonable access to *its* records . . .” (emphasis added). Appellant argues City has never produced *its* records.

¶10 City responds that the records produced by Ballard constitute *its* records under the Act because Ballard, as City Attorney, is City’s representative and he maintained exact duplicates of the subject records at his law office. City relies on 51 O.S. Supp. 2014 §24A.3(1), which defines “Record” as:

[A]ll documents . . . created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.

¶11 Although City’s argument is alluring and reasonable, we must reject it based upon the law. The financial records of the City of Claremore have never been produced in this litigation, as requested by Appellants in their two Open Records Act requests. The documents provided by Ballard might actually constitute official City records and we have no reason to doubt the honesty and integrity of Mr. Ballard. However, the City Clerk testified that *she* is the person in charge of responding to

Open Records Act requests for the City of Claremore and she never compared the items given to Appellant with City's records.

¶12 Moreover, the documents turned over by Ballard - even if deemed official City records - only partially satisfied Appellant's requests. Ballard's documents consisted only of his firm's billing records (the amounts his firm charged City) and a contract. Appellant was never provided with evidence of what City actually spent defending the underlying suit; Appellant requested "all expenditures" and "copies of all checks, vouchers, or other form of payment to any and all law firms or attorneys" The amount of those expenditures might equal the billing statements supplied by Ballard, but we do not know because the official records of City were never compared with the documents Ballard delivered.

¶13 On the basis of the foregoing, we hold City violated the Act by failing to produce the records sought by Appellant. Accordingly, the judgment of the trial court is reversed and this matter is remanded for further proceedings consistent with this opinion. As this Court stated in *Ward I*, "Title 51 O.S. 2011 §24A.17(B) 'provides that any person denied access to a public record and who successfully brings a civil action for declarative or injunctive relief is entitled to reasonable attorney fees.'" *Ward I*, 2014 OK 1, ¶17, quoting *Fabian & Associates, P.C. v. State ex rel. Dept. of Pub. Safety*, 2004 OK 67, ¶19, 100 P.3d 703. Appellant's request for reasonable

attorney fees for prosecuting this action at trial is hereby granted. The trial court is directed to determine the same on remand. However, Appellant's request for appeal related attorney fees is denied without prejudice to refiling pursuant to Rule 1.14(B), *Oklahoma Supreme Court Rules*, 12 O.S. Supp. 2013, Ch. 15, App. 1. "A motion for an appeal related attorney's fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate." *Id.*

¶14 REVERSED AND REMANDED.

JOPLIN, J., and HETHERINGTON, J., concur.