

Summary of SC95307, *Rachal Laut, f/k/a Rachal Govro and John M. Soellner v. City of Arnold*

Appeal from the Jefferson County circuit court, Judge Gary Kramer
Argued and submitted February 24, 2016; opinion issued June 28, 2016.

Attorneys: Laut and Soellner were represented by W. Bevis Schock, an attorney in St. Louis, (314) 721-1698, and Hardy C. Menees of Menees, Whitney, Burnet & Trog in Kirkwood, (314) 821-9798. The city was represented by Robert K. Sweeney and Allison M. Sweeney of Robert K. Sweeney LLC in Hillsboro, (636) 797-5600.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Plaintiffs appeal the trial court’s judgment that they are not entitled to attorney fees for a city’s failure to provide an internal affairs report in response to Plaintiffs’ sunshine law request because the city did not knowingly or purposely violate the sunshine law. In a 5-2 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court’s decision. The trial court’s ruling that the evidence did not support a finding that the City acted with a conscious design, intent or plan to violate the law or that the City knew its actions violated the sunshine law is supported by substantial evidence and is not against the weight of the evidence.

Judge Zel M. Fischer and Judge Paul C. Wilson both dissent in separate opinions. They disagree with the principal opinion’s definition of “knowingly,” which derives from unpersuasive dicta. Both would reverse the judgment and would remand (send back) the case to the circuit court to apply its factual findings to the proper definitions of “knowingly” and “purposely.” They differ, however, as to the proper definition of “knowingly.” Judge Fischer would follow the Court’s basic rules of statutory construction, defining the term using its usual and ordinary meaning as derived from the dictionary. Judge Wilson, however, would look to the criminal law’s definition of the term, which was known to the legislature before it adopted the sunshine law or the amendment providing for attorney fees when a defendant “knowingly” violated the law.

Facts: Rachal Laut and John Soellner (Plaintiffs) believed one or more employees of the city of Arnold had illegally accessed Plaintiffs’ confidential records in the “Regional Justice Information System” database. After filing a complaint, Plaintiffs made a sunshine law request asking for all records, incident reports and internal affairs investigative reports related to the complaint and any disciplinary action taken against the city employees. The city replied that all the records were exempt from disclosure under the sunshine law because the records contained personnel information about specific employees. Plaintiffs appealed, and the appellate court sent the case back to the trial court, which conducted a confidential review of the requested records. The trial court found that all records but the internal affairs report were exempt from disclosure. It found the internal affairs investigation was initiated after a complaint of alleged criminal activity and, under the sunshine law the report, became an open record once the criminal investigation became inactive. The city produced the report. Plaintiffs also sought attorney fees and a civil penalty against the city under section 610.027, RSMo, which provides remedies of

civil monetary penalties, costs and attorney fees when a plaintiff shows that a defendant's violation of the sunshine law was knowing or purposeful. After a hearing, the trial court found that the city did not knowingly or purposefully violate the sunshine law. Plaintiffs appeal.

AFFIRMED.

Court en banc holds: The trial court did not err in entering judgment against Plaintiffs on the question of civil penalties and attorney fees. The question in this case is not whether the city violated the sunshine law but whether the violation was knowing or purposeful. Section 610.027 expressly states that a "knowing" violation occurs when the public entity "has knowingly violated sections 610.010 to 610.026." To prove a "knowing" violation, a party must prove the public entity knew its failure to produce the report violated the sunshine law. The standard to prove a "purposeful" violation is higher: the party must prove the public entity acted with a "conscious design, intent, or plan" to violate the sunshine law. The city presented evidence it believed that the internal affairs investigation was not a criminal investigation but a determination of the city employees' fitness to perform their duties and that the resulting report was a personnel matter exempt from disclosure under section 610.021 of the sunshine law. It was up to the trial court to weigh the evidence and resolve the factual question whether the city's conduct constituted "knowing" or "purposeful" violations under section 610.027.

Dissenting opinion by Judge Fischer: The author disagrees with the principal opinion's reliance on unpersuasive dicta to define "knowingly" for purposes of section 610.027, RSMo.

In allowing a circuit court to order a defendant to pay a plaintiff's attorney fees when the defendant "purposely" violated the sunshine law, the legislature did not define "purposely." In *Spradlin v. City of Fulton*, this Court held that a defendant "purposely" violates the sunshine law only when the defendant has a "conscious design, intent, or plan to violate the law and [acts] ... with awareness of the probable consequences." The legislature later amended section 610.027 to make such an award mandatory in cases in which the defendant "purposely" violated the law and to allow (but not require) a circuit court to award attorney fees when a defendant "knowingly" violated the sunshine law. The two terms are not synonymous, or else the legislature's addition of the "knowingly" category would be meaningless. The principal opinion takes its definition of "knowingly" from the Court's 2015 decision in *Strake v. Robinwood West Community Improvement District*. That decision, however, held the defendant "purposely" violated the sunshine law, so the opinion's definition for "knowingly" was merely dicta. In addition, that dicta was based on an unpersuasive origin – a court of appeals decision that, in turn, was based on an unpublished federal district court decision explicitly noting it was applying *Spradlin's* definition of "purposely. By giving "knowingly" a definition that is the functional equivalent of "purposely," the principal opinion frustrates the intended effect of the amendments by rendering the sought-after expansion of cases in which attorney fees may be awarded wholly illusory. Instead, this Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the statute's plain language, giving the word its usual and ordinary meaning as derived from a regular dictionary (not a legal dictionary). Using a regular dictionary definition, a defendant "knowingly" violates the sunshine law when the defendant simply has "knowledge, information, or insight" as to whether a particular record was requested and whether the record thereafter was disclosed.

Accordingly, the author would reverse the judgment based on misapplication of the law to the facts and remand the case to the circuit court to apply its factual findings to the proper definition of “knowingly,” as defined in this dissent, and “purposely,” as defined in *Strake*, which had not yet been decided when the circuit court entered its judgment in this case.

Dissenting opinion by Judge Wilson: The author finds the principal opinion frustrates the intent of the amendments to the sunshine law to expand cases in which attorney fees may be ordered by defining “knowingly” so that it is functionally, if not precisely, the same as the definition of “purposely.”

In allowing a circuit court to order a defendant to pay a plaintiff’s attorney fees when the defendant “purposely” violated the sunshine law, the legislature did not define “purposely.” In *Spradlin v. City of Fulton*, this Court held that a defendant “purposely” violates the sunshine law only when the defendant has a “conscious design, intent, or plan to violate the law and [acts] ... with awareness of the probable consequences.” The legislature later amended section 610.027 to make such an award mandatory in cases in which the defendant “purposely” violated the law and to allow (but not require) a circuit court to award attorney fees when a defendant “knowingly” violated the sunshine law. The two terms are not synonymous, or else the legislature’s addition of the “knowingly” category would be meaningless. The principal opinion takes its definition of “knowingly” from the Court’s 2015 decision in *Strake v. Robinwood West Community Improvement District*. That decision, however, held the defendant “purposely” violated the sunshine law, so the opinion’s definition for “knowingly” was merely dicta. In addition, that dicta was based on an unpersuasive origin – a court of appeals decision that, in turn, was based on an unpublished federal district court decision explicitly noting it was applying *Spradlin*’s definition of “purposely. By giving “knowingly” a definition that is the functional equivalent of “purposely,” the principal opinion frustrates the intended effect of the amendments by rendering the sought-after expansion of cases in which attorney fees may be awarded wholly illusory.

To give the amendments their intended effect, this Court should define “knowingly” as used in section 610.027 to be broader than the definition of “purposely” given in *Spradlin*. Such a definition has been available in the state’s criminal law since well before the legislature first adopted the sunshine law and later amended section 610.027. Section 562.016, RSMo, provides that a person “acts knowingly” with respect to conduct or to attendant circumstances “when he is aware of the nature of his conduct or that those circumstances exist” or with respect to conduct “when he is aware that his conduct is practically certain to cause that result.” In contrast, section 562.016 provides that a person “acts purposely” with respect to conduct or a result “when it is his conscious object to engage in that conduct or to cause that result.” Ignorance of the law is no excuse – unless a statute dictates a different result, the term “knowingly” merely requires proof of knowledge of the facts that constitute the offense and does not refer to a culpable state of mind or to knowledge of the law. Given the section 562.016 definition of “knowingly,” of which the legislature would have been aware when adopting the sunshine law, the intent of its decision to use the term “knowingly” in its amendment to section 610.027.3 was to create a category of cases in which a circuit court would have discretion to award attorney fees when the defendant knew a record had been requested and was not produced, regardless of whether the defendant knew or had reason to know such conduct violated the sunshine law.

Accordingly, the author would reverse the judgment and remand the case to the circuit court to apply its factual findings to the proper definition of “knowingly,” as defined in this dissent, and “purposely,” as defined in *Strake*, which had not yet been decided when the circuit court entered its judgment in this case to determine whether an award of attorney fees is merited.