Missouri Court of Appeals
Southern District
In Division

CITY OF VIENNA,

Petitioner-Respondent,

v.

SHERIFF HAROLD C. HEITMAN,

Respondent-Appellant.

Case Number SD39019

Filed: May 29, 2026

APPEAL FROM THE CIRCUIT COURT OF MARIES COUNTY

Honorable Brendon Fox, Judge

AFFIRMED

Introduction

Sheriff Harold C. Heitman (Sheriff Heitman) appeals from the trial court's judgment overruling his application for an order to show cause and attorney fees against the City of Vienna (Vienna). We affirm.

Background

On March 26, 2024, pursuant to Missouri's Sunshine Law, Section 610.023 *et seq.* RSMo Cum. Supp. 2016[1] (Sunshine Law), Sheriff Heitman sought public records in the

[1] All further statutory references are to RSMo (2016).

possession of the "Vienna Police Department, it's [sic] Chief of Police, or any Vienna City employee," pertaining to "any alleged inappropriate or criminal activity of [Sheriff Heitman] or any employee of his office in the past 7 years. This is to include all letters, emails, investigations, reports, or probable cause statements." Sheriff Heitman stated the request was in response to a quote making allegations of misconduct against him by Vienna's Chief of Police in an article published by the Riverfront Times.

Due to the political nature of Sheriff Heitman's request during an election year, Vienna filed a petition for declaratory judgment pursuant to Section 610.027.6, seeking a determination of the extent to which the records he sought were open or closed and whether he was entitled to records. On November 18, 2024, the trial court entered an order on the motions for partial summary judgment filed by both parties and found that "although the records are closed, the interests of the public warrant declaring them to be open and documents are to be provided to [Sheriff Heitman]." On December 23, 2024, the court issued judgment stating "[a]fter discussion with the parties, agreement was reached on all issues." The court incorporated the November 18 summary judgment order and ordered Vienna to pay attorney fees and costs to Sheriff Heitman of $12,478.40.

On February 7, 2025, Sheriff Heitman filed an application to show cause, alleging Vienna had not fully complied with the December 23, 2024 judgment. Specifically, Sheriff Heitman claimed Vienna had not provided him with certain reports and had not paid his fees and costs. On March 13, 2025, a receipt was filed reflecting Vienna's payment of the $12,478.40 in fees and costs to the circuit court. On April 21, 2025, a

hearing was held on the application to show cause, and the court issued its judgment on May 16, 2025. The court found there was not sufficient evidence to conclude Vienna acted willfully, purposefully, or knowingly; thus, was not in contempt and denied his request for attorney fees. Sheriff Heitman now appeals.

Discussion

Sheriff Heitman asserts one point on appeal. His sole argument is the trial court erred in denying his request for attorney fees after finding Vienna's actions were neither willful, purposeful, nor knowing because Vienna initiated the action at its own expense pursuant to Section 610.027.6, and having brought suit assumed responsibility for all Sheriff Heitman's attorney fees and costs through the conclusion to all legal proceedings to include this matter. In its response, Vienna claims Sheriff Heitman has waived any additional argument concerning the substance of the trial court's judgment because he solely raises the issue of attorney fees on appeal. We agree and accordingly limit our review.

Standard of Review

As in court-tried matters, we will affirm the trial court's judgment in a civil contempt proceeding unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. ***Malin v. Cole Cnty. Prosecuting Atty.***, 631 S.W.3d 638, 643 (Mo. App. W.D. 2021) (internal quotations omitted). The trial court as trier of fact is free to believe or disbelieve witness testimony, and when evaluating the trial court's factual and credibility determinations we defer to

the court. ***Tadych v. Horner***, 336 S.W.3d 174, 177 (Mo. App. W.D. 2011) (internal quotations omitted).

Analysis

The Sunshine Law was enacted to allow public access to governmental records and meetings. ***Jones v. Jackson Cnty. Circuit Court***, 162 S.W.3d 53, 59 (Mo. App. W.D. 2005). In response to a request for such records, a public governmental body, which believes its records should be closed but is in doubt about the legality of doing so, may bring suit to ascertain the propriety of any action. Section 610.027.6. The statute states such suit is brought "at the expense of that public governmental body." ***Id.*** It is this provision Sheriff Heitman argues supports his claim the trial court erred in denying his request for attorney fees in his subsequent cause of action to enforce the December 23, 2024 judgment.

We agree caselaw dictates **if a government body brings suit** under Section 610.027.6, liberal construction of the phrase "at the expense of that public governmental body" requires the entity to pay the attorney fees of the party it sues. *See, e.g.*, ***Hemeyer v. KRCG-TV***, 6 S.W.3d 880, 883 (Mo. banc 1999); ***City of Springfield v. Events Publishing Co.***, 951 S.W.2d 366, 373-374 (Mo. App. S.D. 1997); ***State ex rel. Missouri Local Government Retirement System v. Bill***, 935 S.W.2d 659, 665-666 (Mo. App. W.D. 1996). Instead, here, Sheriff Heitman – not Vienna – filed a subsequent and separate cause of action against Vienna, arguing it failed to comply with the court's judgment.

In ***Hemeyer***, a television station sought video of a state representative's booking for driving while intoxicated from the county sheriff. 6 S.W.3d at 881. The sheriff refused and filed suit seeking a declaration that the tape was not a public record under the Sunshine Law. *Id*. The court found it was not a public record and did not have to be disclosed and the television station appealed. *Id*. In its appeal, the station argued it was entitled to an award of attorney fees. *Id*. at 882-883. The Supreme Court discussed the award of attorney fees in such declaratory judgment actions brought by a public governmental body as governed by Section 610.027.5.[2] Pursuant to the statute, the suit is brought "at the expense of the public governmental body," which was interpreted to essentially impose strict liability upon the public body for the attorney fees of the party it sues. *Id*. at 883; Section 610.027.6. However, in determining the television station was entitled to attorney fees under Section 610.027.5, the Court distinguished a suit by a public entity for declaratory judgment from those for "judicial enforcement" of the Sunshine Law. *Id*. 883-884 ("Suits for 'judicial enforcement' of chapter 610 are governed by the first four subsections of 610.027."). Under Section 610.027.3, the court may order payment of costs and reasonable attorney fees if it finds a knowing violation of the Sunshine Law. Similarly, subsection four allows for the same if the court finds a purposeful violation.

[2] At the time of the ***Hemeyer*** decision, Section 610.027 contained only five subsections. The statute was amended in 2004 to include separate subsections and penalties for conduct that constituted either knowing or purposeful violations, and subsection five was renumbered to six.

Here, while Vienna initially filed a petition for declaratory judgment, the action concluded with the trial court's December 23, 2024 judgment. The trial court properly awarded Sheriff Heitman attorney fees and costs in Vienna's initial declaratory judgment action pursuant to Section 610.027.6. The conclusion of this proceeding effectively placed Sheriff Heitman into the same position as any litigant entitled to records pursuant to the Sunshine Law, only he was entitled to his by virtue of a court order. In this procedural posture, when he subsequently sought "judicial enforcement" of the December 23, 2024 judgment, his cause of action was governed by the first four subsections of Section 610.027, as recognized by the ***Hemeyer*** Court. 6 S.W.3d at 883-884. As any other litigant seeking judicial enforcement of a Sunshine request, Sheriff Heitman was only entitled to an award of his fees and costs upon showing a knowing or purposeful violation. *Id*.; Section 610.027.3 and .4.

Sheriff Heitman properly argued Vienna knowingly and purposefully failed to comply with the trial court's judgment and as a result he was entitled to not only the documents but his attorney fees in bringing this action. Sheriff Heitman would be entirely correct had the court found merit to his knowing and/or purposeful claims.

However, the record supports the trial court's finding "there is not sufficient evidence to find the actions of the City of Vienna were willful, purposeful, or knowingly [sic]." Vienna paid $12,478.40 in fees and costs as ordered by the court in its December 23, 2024 judgment and provided Sheriff Heitman with the required records.

The Vienna Chief of Police, who was also custodian of records for the police department, testified the failure to initially provide all the requested information was not

knowing or purposeful, but was the result of confusion regarding what records were included and their omission was merely an oversight. The court was free to believe all, part or none of his testimony and our appellate court defers to the sound exercise of this discretion. ***Tadych***, 336 S.W.3d at 177 (internal quotations omitted). Since Sheriff Heitman did not prevail in showing the requisite purposeful or knowing violation of the Sunshine Law by Vienna, the trial court did not err in denying his request for attorney fees and costs.[3]

Conclusion

The judgment of the trial court is affirmed.

LISA P. PAGE, Sp.J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, C.J. – CONCURS

BECKY J. WEST, J. – CONCURS

[3] Sheriff Heitman's request for attorney fees on appeal was taken with the case and is denied.