

**IN THE CIRCUIT COURT FOR HOWARD COUNTY
FOURTEENTH JUDICIAL CIRCUIT
STATE OF MISSOURI**

GLASGOW SCHOOL DISTRICT,)
)
 Plaintiff,)
)
v.)
)
HOWARD COUNTY CORONER,)
a public entity,)
)
 Defendant.)
)

Case No. 17HD-CC00032

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

At a bench trial conducted on January 16, 2020, before the undersigned, testimony and documentary evidence was presented and received on the claims raised in the matter by Plaintiff and Defendant’s defenses thereto. Both parties appeared at the trial through counsel. Following trial, both Parties submitted post-trial briefs. Having been fully advised, the undersigned makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. Defendant’s Background

1. Defendant has been the Howard County Coroner for over 28 years. (party stipulation, ¶1).
2. Defendant is the custodian of records for the Howard County coroner’s office. (trial testimony of Defendant).

3. Defendant has been trained on the Sunshine Law and its obligations. (party stipulation, ¶2).

4. At the training sessions, Defendant was provided with legal reference materials on the Sunshine Law. (trial testimony of Defendant).

5. As Howard County Coroner, Defendant cannot prepare a probable cause statement for general members of the public. (trial testimony of Defendant).

6. As Howard County Coroner, Defendant cannot arrest general members of the public. (trial testimony of Defendant).

B. Inquest Procedures

7. April Wilson was the special prosecuting attorney assigned to K.S.'s case. (trial testimony of April Wilson).

8. On January 31, 2017 Defendant held a coroner's inquest regarding the death of K.S. (party stipulation, ¶3).

9. Defendant prepared a News Release dated January 9, 2017 regarding the January 31, 2017 coroner's inquest into the death of K.S. (party stipulation, ¶4).

10. Defendant's News Release was published in the Fayette Newspaper on January 10, 2017. (party stipulation, ¶5).

11. Defendant empaneled six jurors for the inquest and conducted the inquest in an open manner before the general public. (party stipulation, ¶7).

12. Numerous members of the community, including members of the local media, attended the public inquest. (party stipulation, ¶8).

13. Defendant was involved in determining what exhibits to present to the jury and the members of the public in attendance. (party stipulation, ¶9).

14. Defendant determined what witnesses to call at the public inquest and prepared said witness list. (trial testimony of April Wilson).

15. Deputy Brad Young (“Deputy Young”) investigated K.S.’s death. (trial testimony of Brad Young).

16. Deputy Young prepared a comprehensive police report summarizing his entire investigation of K.S.’s death. (trial testimony of Deputy Young).

17. Deputy Young’s police report was an exhibit presented at the public inquest. (party document stipulation, ¶32 - inquest transcript, p. iv)).

18. Deputy Young testified at the coroner’s inquest, reading from and summarizing his police report. (Trial Testimony of Deputy Young).

19. The notes K.S. left behind were also exhibits presented at the public inquest. (party document stipulation, ¶32 – inquest transcript, p. iv).

20. Portions of the notes were read aloud at the inquest. (party document stipulation, ¶32 – inquest transcript, pp. 19-23).

21. Defendant presented all information and testimony at the inquest in front of the viewing public. (party stipulation, ¶10).

22. There was no limiting instruction by anyone on the evidence or testimony presented at the public inquest. (party stipulation, ¶11).

23. The inquest was at the sole direction of the coroner, not the prosecuting attorney. (trial testimony of Defendant and April Wilson).

24. The public inquest was transcribed in its entirety. (party stipulation, ¶12).

25. The inquest transcript was provided to Defendant on February 14, 2017 (Plaintiff’s Trial Exhibit 1 - Defendant’s Affidavit, ¶4).

26. Defendant retained a copy of the inquest transcript as well as some of the exhibits offered during the inquest. (party stipulation, ¶14).

27. Criminal charges arose from the inquest and were pending from January 31, 2017 to July 12, 2019. (party stipulation, ¶¶ 15-16).

C. Sunshine Law Requests and Legal Advice

28. On February 2, 2017, Plaintiff requested a copy of the inquest transcript from Defendant. (trial testimony of Defendant).

29. On February 17, 2017, Sherry Shive requested a copy of the inquest transcript from Defendant to clear her son's name who had been identified as one of K.S.'s bullies of which Defendant was aware. (Plaintiff's Trial Exhibit 9 – Sherry Shive's Affidavit, ¶3; trial testimony of Defendant).

30. On February 17, 2017, Defendant called the Attorney General's Office regarding whether the inquest transcript was an open record that required disclosure under the Sunshine Law and was advised that it may be an open record and to contact local counsel. (Plaintiff's Trial Exhibit 1, ¶5).

31. On February 21, 2017, Defendant spoke with April Wilson about whether the transcript was an open record and she advised she believed it was closed as investigative reports but would confirm and let him know. (Plaintiff's Trial Exhibit 1, ¶6; trial testimony of Defendant).

32. On February 23, 2017, Defendant provided Sherry Shive a copy of the inquest transcript, free of charge. (party stipulations, ¶¶17-18).

33. On February 23, 2017, Defendant provided K.S.'s family a copy of the inquest transcript, free of charge. (party stipulation, ¶19; trial testimony of Defendant).

34. On February 23, 2017, Defendant had decided to treat the inquest transcript as open under the Sunshine Law. (trial testimony of Defendant).

35. Unlike what was done for Sherry Shive's request and K.S.'s family, Defendant did not provide a copy of the inquest transcript to Plaintiff on February 23, 2017 despite Plaintiff's pending February 2, 2017 request for the inquest transcript. (trial testimony of Defendant).

36. On or about February 24, 2017, Plaintiff made another request for the inquest transcript and exhibits. (trial testimony of Defendant).

37. Unlike being provided free of charge as was done for Sherry Shive and K.S.'s family, Defendant told Plaintiff it would have to pay for a copy of the inquest transcript. (trial testimony of Defendant; Defendant's Trial Exhibit H).

38. Defendant did not provide Plaintiff a copy of the inquest transcript or exhibits in his possession in response to Plaintiff's February 24, 2017 request. (party stipulation, ¶20; trial testimony of Defendant).

39. On March 2, 2017 April Wilson advised Defendant that she believed the inquest transcript and exhibits to be closed. (Plaintiff's Trial Exhibit 1, ¶10; trial testimony of Defendant).

40. On March 2, 2017, Defendant advised Plaintiff's counsel that he considered the inquest transcript and exhibits closed as investigative records and would not be providing them to Plaintiff. (Plaintiff's Trial Exhibit 1, ¶11)

41. On March 2, 2017, Plaintiff made another request to Defendant for the inquest transcript and exhibits. (party document stipulation, ¶34).

42. Defendant did not provide Plaintiff the inquest transcript or exhibits in response to Plaintiff's March 2, 2017 request. (party stipulation, ¶21).

43. On March 9, 2017, Plaintiff sent correspondence to Defendant following up on its March 2, 2017 request, and attached thereto an Attorney General Opinion Letter. (party document stipulation, ¶¶35-36).

44. The Attorney General Opinion Letter said “[i]t is our view that the exceptions specified in §610.025 are not applicable, and that the coroner’s jury, constitutes a “public governmental body,” that the coroner’s records, unless specifically designated otherwise, are public records and that the inquest conducted by the coroner pursuant to Chapter 58 is a “public meeting” within the provision of the Sunshine Law.” The Letter also said “[i]t is likewise our view that the county coroner does not have the authority to refuse to grant access to materials which may be presented at an inquest.” (party document stipulation, ¶36).

45. Defendant reviewed the Attorney General Opinion Letter Plaintiff provided him. (trial testimony of Defendant).

46. After reviewing the Attorney General Opinion Letter, Defendant still chose not to provide Plaintiff a copy of the inquest transcript or exhibits. (trial testimony of Defendant).

47. On March 13, 2017, Defendant remitted correspondence to Plaintiff’s counsel advising the requested records were part of April Wilson’s criminal investigation, were not open records, and could not be released until April Wilson released them. (party document stipulation, ¶37).

48. On March 23, 2017 Plaintiff filed the underlying lawsuit requesting access to the inquest transcript and exhibits. (party stipulation, ¶23).

49. On October 9, 2017, the circuit court judge entered an Order finding Defendant wrongfully denied access to the hearing transcript of, and exhibits offered during, the Howard

County Coroner's Inquest held on or around January 31, 2017, in violation of Chapter 610 RSMo. (judicial notice, ¶42).

50. Despite the court's Order, Defendant still did not provide Plaintiff the inquest transcript or exhibits. (trial testimony of Defendant).

51. Defendant chose to withhold a copy of the inquest transcript from Plaintiff until November 2, 2017. (party document stipulation, ¶39).

52. At the November 1, 2017 hearing on this matter, the circuit court judge told Defendant personally that he was to exercise good faith to get with the sheriff's department to get Plaintiff the remaining inquest exhibits. (party document stipulation, ¶38 at 45:19-21).

53. Defendant did not personally reach out to the sheriff's department after being directed by the court to exert the good faith effort. (trial testimony of Defendant).

54. To exude this good faith effort, Defendant directed his attorney to write a letter to the sheriff's department. (trial testimony of Defendant).

55. On November 2, 2017, Defendant's counsel sent a letter, as directed by Defendant, to the sheriff's department. (party document stipulation, ¶40; trial testimony of Defendant).

56. The letter only set forth the legal bases under which Defendant believed the exhibits should be withheld from Plaintiff. (party document stipulation, ¶40).

57. Nowhere did the letter mention the court's directive or that Defendant was making a good faith effort to assist Plaintiff in obtaining the exhibits from the public inquest that the sheriff's department then had in its possession. (party document stipulation, ¶40; trial testimony of Defendant)

58. On November 2, 2017, Plaintiff's counsel advised Defendant that the letter remitted to the sheriff's department did not comply with the court's directive directly to Defendant to exercise good faith to help Plaintiff get the inquest exhibits. (party document stipulation, ¶41).

59. Defendant took no curative action with the letter and advised that if Plaintiff wished to obtain the inquest exhibits it should subpoena them. (party document stipulation, ¶41).

60. Plaintiff thereafter subpoenaed the inquest exhibits (trial testimony of April Wilson)

D. Purposeful Violation – Evidence of an Improper Motive behind Performing the Inquest Aimed Against Plaintiff

61. The purpose of a coroner's inquest is to determine the manner and cause of death. (trial testimony of Defendant).

62. Defendant held a coroner's inquest for K.S. even though he had already determined the physical cause of death and submitted a death certificate for K.S., seeking after the inquest to amend K.S.'s death certificate with the inquest jury's findings. (party document stipulation ¶38, 39:14-25).

63. Per Defendant, there are a limited number of discrete reasons for which an inquest can be held. (trial testimony of Defendant).

64. Defendant did not conduct an inquest into K.S.'s suicide for any of the permissible reasons he identified at trial. (trial testimony of Defendant).

65. Instead, Defendant testified that he heard K.S. had been bullied at school and chose to conduct an inquest into K.S.'s suicide because he wasn't going to be responsible for letting another child die and if he held the inquest maybe it would prevent another child's death. (trial testimony of Defendant).

66. Similarly, Defendant had told HBO in 2017 “this is bullying that’s so bad that a kid, 17 year old boy, took his life. We need to do something to prevent that from happening again.” (Plaintiff’s Trial Exhibit 15 – HBO Video at 2:38 – 2:47).

E. Purposeful Violation – Evidence of Intentional Disparate Treatment of Sunshine Law Requests against Plaintiff

67. Defendant’s legal knowledge and personal stance about the openness of the inquest transcript remained unchanged from February 21, 2017 up to March 2, 2017. (Plaintiff’s Trial Exhibit 1 – Defendant’s Affidavit at ¶¶ 5-10; trial testimony of Defendant).

68. Despite no change in legal knowledge or personal stance, Defendant chose during that interim to provide the inquest transcript to Sherry Shive and K.S.’s family, but chose not to provide the inquest transcript to Plaintiff. (Plaintiff’s Trial Exhibit 1 – Defendant’s Affidavit at ¶5-10; party stipulation ¶17; party document stipulation ¶33; trial testimony of Defendant).

69. Defendant had both a full version and condensed version of the inquest transcript, which are the same except the condensed version had four sheets of the transcript to a page whereas the full had a single sheet of the transcript to a page. (trial testimony of Defendant).

70. Defendant responded to Sherry Shive’s Sunshine Law request for a copy of the “inquest transcript” with a copy of the condensed version of the transcript, which was 65 pages in length. (party document stipulation, ¶32; trial testimony of Defendant).

71. Defendant testified that if he were to respond to Plaintiff’s Sunshine Law request for a copy of the “inquest transcript,” he was going to respond with a copy of the full, rather than condensed, version of the transcript which would be 259 pages in length. (party document stipulation ¶32; trial testimony of Defendant).

72. Defendant responding in different form to Plaintiff and Sherry Shive when both requested the “inquest transcript” was a choice of Defendant’s; no confirmation from Plaintiff was ever sought to indicate Plaintiff was requesting the full, version of the transcript rather than the condensed version. (trial testimony of Defendant).

73. Defendant used the length of the copy to be given to Plaintiff as a basis for why he did not provide Plaintiff a copy of the inquest transcript on February 23, 2017 like he had done for Sherry Shive and K.S.’s family, testifying that it would take hours for him to copy the full transcript on the copy machine. (trial testimony of Defendant).

74. Defendant thought Plaintiff would want the full rather than condensed version of the inquest transcript because Plaintiff wanted it for legal purposes. (trial testimony of Defendant).

75. Defendant knew Sherry Shive was requesting the transcript to clear her son’s name of the alleged bullying, the same legal reason for which Plaintiff sought the transcript. (trial testimony of Defendant).

76. The other reason Defendant provided for not providing Plaintiff a copy of the inquest transcript on February 23, 2017 as he had done for Sherry Shive was because Plaintiff did not show up in person at Defendant’s office on that date as Sherry Shive had done. (trial testimony of Defendant).

77. Defendant understood that the manner in which Plaintiff had submitted the request for the inquest transcript was sufficient under the Sunshine Law; personal appearance at Defendant’s office was not required. (trial testimony of Defendant).

78. Defendant also provided the inquest transcript to Sherry Shive and K.S.’s family free of charge, whereas he sought to charge Plaintiff. (Plaintiff’s Trial Exhibit 1 – Defendant’s Affidavit at ¶9; party stipulation ¶¶18-19).

79. The only basis Defendant gave for the disparity in cost as against Plaintiff was his unilateral choice to provide Sherry Shive and K.S.'s family the condensed version of the transcript and Plaintiff the full version. (trial testimony of Defendant).

F. Purposeful Violation – Knowledge of but No Action of Personal Responsibility by Defendant

80. Defendant testified that his actions were based on the reliance of April Wilson and subsequently retained personal counsel, but also testified that he did not believe getting advice of an attorney absolved him of personal liability. (trial testimony of Defendant).

81. Defendant located his Sunshine Law legal reference materials during the time in question but never looked at them to aid him in ascertaining whether the inquest transcript and exhibits were open or closed records. (trial testimony of Defendant).

82. The Howard County prosecuting attorney is the attorney for county officials. (trial testimony of Defendant)

83. Steve Murrell was the Howard County prosecuting attorney during the time in question. (trial testimony of Defendant).

84. Defendant never reached out to Steve Murrell for guidance to determine whether the inquest transcript and exhibits were open or closed records. (trial testimony of Defendant).

G. Purposeful Violation – Incongruity Amongst Defendant's Beliefs and Change of Defense Theory for Varying Circumstances

85. Defendant testified that prior to the events in question he had previously already read Missouri statutory provisions and had previously already formed the opinion that he was a law enforcement agency. (trial testimony of Defendant).

86. Defendant believed that as a law enforcement agent, RSMo. 610.100 applied to him. (trial testimony of Defendant)

87. When Defendant decided in March 2017 not to provide Plaintiff a copy of the inquest transcript or exhibits, he advised that the documents were part of April Wilson's ongoing investigation, had been deemed closed by April Wilson, and could not be disclosed until April Wilson released them. (Plaintiff's Exhibit 1, ¶10; party document stipulation, ¶37).

88. During litigation defendant's position shifted and then became that he personally, as a law enforcement agent, had the authority to close documents as investigative reports. (trial testimony of Defendant).

89. Defendant's position at trial remained that he believed he is a law enforcement agent who has the authority to close documents relating to an inquest as investigative reports (trial testimony of Defendant).

90. Defendant also testified at trial that he knew the law required inquests to be open to the public and that he knew there was no provision in the law that allowed him to close the inquest. (trial testimony of Defendant).

91. Defendant's maintenance of his new position through trial came in unison with April Wilson taking up on a writ her theory that the documents at issue were part of her ongoing criminal investigation, were investigative reports, and thus could be closed by her, and losing. (trial testimony of Defendant; Trial testimony of April Wilson).

H. Purposeful Violation – Mismatching of Defendant's Defense Theories and Defendant's Actions.

92. While Defendant testified that he had no doubt from the outset that he was a law enforcement agent and in that capacity he personally had authority to close records as investigative reports under RSMo 610.100, he did not invoke any such authority in responding to Sherry Shive's Sunshine Law request. (party document stipulation, ¶33; party stipulation 17-18; trial testimony of Defendant).

93. While Defendant testified that he had no doubt from the outset that he was a law enforcement agent and in that capacity he personally had authority to close records as investigative reports under RSMo 610.100, he told Plaintiff that April Wilson is who closed the records in question. (party document stipulation ¶37; trial testimony of Defendant).

94. RSMo 610.100.4 states that any person, including a legal guardian or a parent of such person if he or she is a minor, family member of such person within the first degree of consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this section. (judicial notice, ¶48).

95. Defendant testified that the inquest was investigating bullying at Plaintiff's District, that he believed the inquest may have resulted in civil liability concern for Plaintiff, and that he provided a copy of the inquest transcript to K.S.'s family on February 23, 2017 because he was required by statute to do so, but Defendant did not also provide a copy of the inquest transcript to Plaintiff per the statute he said governed him, RSMo 610.100. (trial testimony of Defendant).

96. While Defendant was refusing to provide Plaintiff the inquest transcript and exhibits, which included the suicide notes, Defendant participated in a video interview with HBO wherein he discussed the inquest matter and divulged on camera contents of the suicide notes. (Plaintiff's Trial Exhibit 15 – HBO Video at 4:06-4:20; trial testimony of Defendant).

97. Defendant had an understanding that HBO would be publishing the video interview. (trial testimony of Defendant).

98. HBO published the video interview on June 7, 2017. (Plaintiff's Trial Exhibit 15).

I. Purposeful Violation – Evidence of an Intentional Attempt to Circumvent the Sunshine Law

99. Defendant's son and April Wilson had a text message exchange discussing Plaintiff's Sunshine Law request to Defendant for the inquest transcript. (trial testimony of April Wilson).

100. On February 25, 2017, April Wilson told Defendant's son via text message that she thinks if Defendant would send a copy of the transcript to her it becomes investigative and cannot be released. (trial testimony of April Wilson).

101. On March 2, 2017 Defendant advised Plaintiff verbally that he would not be providing Plaintiff the requested records. (Plaintiff's Trial Exhibit 1, ¶11).

102. On March 3, 2017 Defendant had his son email a copy of the inquest transcript to April Wilson. (trial testimony of Defendant).

103. On March 13, 2017 Defendant provided his written response to Plaintiff's Sunshine Law request stating his records were part of April Wilson's criminal investigation, closed records, and unable to be provided to Plaintiff until April Wilson released them. (party document stipulation ¶37).

J. Attorneys' Fees and Costs

104. Plaintiff has incurred a total of \$73,259.50 in attorney and paralegal fees in this matter to obtain the inquest transcript and exhibits. (See Attorney's Fees Spreadsheets).

105. This amount does not encompass all time Plaintiff's counsel's office invested in this matter; only time for actions required as a direct result of Defendant's refusal to provide the exhibits and transcript respectively.

106. Plaintiff does not seek to recover for time spent on the multiple appeals and writs in this matter.

107. Plaintiff does not seek to recover for time spent on post-trial briefing.

108. Plaintiff's counsel's fees were billed by Thomas Mickes, a litigation partner, Grant Wiens, a litigation partner, Conor Neusel, a prior litigation associate, Brittany Newell, a current litigation associate, Shannon Wooten, a litigation paralegal, and Bridget Layton, a litigation paralegal

109. Plaintiff does not seek to recover the fees for more than two attorneys in any given month.

110. Mr. Mickes' rate is \$275 per hour. Mr. Wiens' rate was \$235 per hour and is currently \$245 per hour. Mr. Neusel's rate was \$175 per hour. Ms. Newell's rate is \$215 per hour. Mrs. Wooten's rate was \$130 per hour and is currently \$140 per hour. Mrs. Layton's rate is \$140 per hour.

111. The hourly rates charged by Plaintiff's counsel are at or below the market rate customarily charged for comparable services by lawyers in the St. Louis Community with similar experience. (*See* Affidavit of Tom Mickes).

112. The time billed by Plaintiff's counsel on this matter was necessary and reasonable.

113. In representing Plaintiff, Plaintiff's counsel also incurred \$2,279.83 in costs, which were charged to Plaintiff.

CONCLUSIONS OF LAW AND JUDGMENT

114. As a matter of law, Defendant is not a "law enforcement agency" under 610.100 RSMo., and cannot close records as "investigative reports" under section 610.100(5) RSMo.

115. As a matter of law, Defendant is a Missouri public governmental body under the Missouri Sunshine Law, Chapter 610.

116. As a matter of law, Defendant wrongfully and repeatedly denied access to open public records requested by Plaintiff in violation of Chapter 610 RSMo.

117. As a matter of law and by a finding of a preponderance of the evidence, Defendant purposefully violated Chapter 610 RSMo.

118. Defendant violated Chapter 610 RSMo. on multiple occasions.

119. Defendant's violations are a serious offense.

120. Because of Defendant's purposeful violation RSMo. 610.027.4 requires Defendant to pay a civil penalty up to \$5,000.

121. Because of Defendant's purposeful violation RSMo. 610.027.4 requires Defendant to pay Plaintiff's costs and reasonable attorney's fees.

122. Because of the size of Howard County, the seriousness of Defendant's violation, and the number of times Defendant violated Chapter 610 RSMo., an appropriate civil penalty in this matter is \$500, plus the statutory attorneys' fees to be paid by Defendant to Plaintiff is \$73,259.50.

123. The hourly rates charged by Plaintiff's counsel are at or below the market rate customarily charged for comparable services by lawyers in the St. Louis Community with similar experience.

124. The time billed by Plaintiff's counsel on this matter was necessary and reasonable.

