FILED BY CLERK
DEC 14 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

HECTOR ROBLES, as Chief of the Nogales Fire Department, and CITY OF NOGALES, a body corporate and politic, Petitioners/Appellants/ Cross-Appellees, v. RIO RICO FIRE DISTRICT, an Arizona body politic, Respondent/Appellee/ Cross-Appellant.	2 CA-CV 2011-0062 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CV10932

Honorable Carmine Cornelio, Judge

AFFIRMED

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H O W A R D, Chief Judge.

¶1 Appellants Hector Robles and the City of Nogales ("Robles") appeal from the trial court's orders requiring appellee Rio Rico Fire District ("RRFD") to produce redacted patient transport records. Robles contends the court erred by requiring it to pay redaction costs and by denying Robles's request for attorney fees. RRFD cross-appeals, arguing the court erred in determining the records were public records rather than medical records. For the following reasons, we affirm.

Factual and Procedural Background

¶2 The underlying factual background is undisputed. RRFD provides non-emergency, ambulance transportation to patients from medical facilities within Nogales city limits to medical facilities outside the city. Robles and RRFD were previously involved in an administrative proceeding on a related issue.

¶3 Robles requested under the public records statutes copies of documents containing response times for each transport from facilities in Nogales to Tucson. After RRFD refused the request, Robles filed a statutory special action under A.R.S. § 39-121.02, challenging the denial of its request. The trial court ordered RRFD to make redacted, interfacility transport records available and ordered Robles to pay costs of production, but denied both parties' requests for attorney fees. This appeal followed.

Costs of Redaction

¶4 Robles first argues the trial court erred by requiring it to pay the cost of redacting confidential information from the records. We only review rulings of the trial court; if a court has not ruled on an issue, we will not address it unless "the record is so

fully developed that the facts and inferences are perfectly clear." *Burns v. Davis*, 196 Ariz. 155, ¶ 40, 993 P.2d 1119, 1129 (App. 1999).

¶5 After a hearing and briefing, the trial court issued a signed final order, ordering RRFD to make redacted transport records available and denying both parties' requests for attorney fees. Robles filed a motion arguing RRFD should be held in contempt because instead of providing original documents for inspection, it intended to provide redacted copies and to charge an administrative fee for the costs of redaction. The court issued a ruling clarifying that the production of the records required RRFD to copy the original documents and set a conference on the issue of the cost.

¶6 After a hearing, the trial court ruled that the city "pay for the production of the copied/redac[]ted documents" but "that the remaining issue is . . . whether [RRFD] is entitled to an administrative charge and if so the reasonableness of that administrative charge in providing redacted copies." The court ordered the parties to brief the issue and set another hearing date. Robles appealed before the parties submitted their briefing and the court cancelled the hearing in light of the appeal. Because the court has not ruled as to whether Robles is required to pay redaction costs, and has not even conducted the hearing on that issue, we will not consider it. *See Burns*, 196 Ariz. 155, ¶ 40, 993 P.2d at 1129.

Attorney Fees

¶7 Robles next contends the trial court erred by denying its request for attorney fees. "We review a trial court's denial of a party's request for an award of

attorney fees for an abuse of discretion." *In re Marriage of Williams*, 219 Ariz. 546, ¶ 8, 200 P.3d 1043, 1045 (App. 2008).

¶8 Section 39-121.02(B), A.R.S., provides that "[t]he court may award attorney fees . . . if the person seeking public records has substantially prevailed." The trial court generally has broad discretion to award or deny attorney fees and we will not reverse its decision unless there is no reasonable basis for it. *Cf. State Farm Mut. Auto. Ins. Co. v. Arrington*, 192 Ariz. 255, ¶ 27, 963 P.2d 334, 340 (App. 1998).

¶9 Here, the trial court stated it denied Robles's request based on "the scope of information th[e] Court has ordered [RRFD] to make available compared to what the City originally demanded." Robles had requested information including: the "number of [transports], dates of service, unit responding, discharging facility, receiving facility, time of page out, time on scene, time departing the scene, time arriving at receiving hospital, total mileage, and patient names" and addresses. And Robles devoted a significant amount of its brief below to its argument that patient names and addresses should not be redacted from the records. The court ordered the patients' names and addresses redacted but ordered RRFD to make all other information available. Thus, the court could have reasonably exercised its discretion in determining that Robles did not substantially prevail because in seeking the records, Robles focused on information the court ordered redacted. *See id.*

¶10 Robles counters that the "core issue" in the special action was whether RRFD was required to provide access to the transport records and that, because the trial

court ordered RRFD to produce the records, Robles substantially prevailed.[1] But as we have discussed, Robles asked for far more information than he was granted. We cannot find the court abused its discretion by denying Robles's request for attorney fees on this basis when he was unsuccessful on a significant portion of his request. *See id.*

Records

¶11 In its cross-appeal, RRFD first contends the trial court erred in finding the transport records were public records rather than medical records. It argues that, if they had been found to be medical records, "there would be no legal basis for requiring RRFD to disclose [the records] without a court or administrative order." RRFD further argues Robles did not comply with the procedural requirements for obtaining medical records and seems to contend it should not have had to make the records available.

¶12 However, a party is bound by its judicial admissions. *See Clark Equip. Co. v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 189 Ariz. 433, 439, 943 P.2d 793, 799 (App. 1997). A judicial admission is an

> express waiver made in court or prepa[ra]tory to trial by the party or his attorney conceding for the purposes of the trial the truth of some alleged fact, [and] has the effect of a confessory pleading, in that the fact is therefore to be taken for granted; so that the one party need offer no evidence to prove it and the other is not allowed to disprove it.

[1]To the extent Robles argues RRFD acted in bad faith, we note that, although § 39-121.02(B) previously provided for an award of attorney fees if the custodian of records acted in bad faith, "the legislature removed that limiting language and replaced it with broader language." *Arpaio v. Citizen Publ'g Co.*, 221 Ariz. 130, ¶ 13, 211 P.3d 8, 12 (App. 2008). And we will not add language to a statute, which the legislature has removed. *Id.*

Id., *quoting* 9 John H. Wigmore, *Evidence* § 2588, at 821 (1981) (second alteration in *Clark*); *see also Ryan v. S.F. Peaks Trucking Co.*, 228 Ariz. 42, n.6, 262 P.3d 863, 868 n.6 (App. 2011). Although the court determined the records were public records, it also noted that RRFD claimed the records should have been sought under the medical records disclosure statute, A.R.S. § 12-2994. It then stated: "In the event that the sought records are not public records . . . the parties stipulated in open court that this Court may issue an order providing for the redaction and availability of the records." And the record supports both parties' concessions that the court could order the production of the redacted records regardless of whether they were public records or medical records. At a hearing on the issue, RRFD acknowledged the court "ha[d] the authority under [§ 12-2294.01] to issue an order with a subpoena directing [it] to turn over" records. RRFD is bound by this admission and cannot now argue the court could not order the production of the records. *See Clark Equip. Co.*, 189 Ariz. at 439, 943 P.2d at 799. Any error in determining the records were public records is therefore harmless. *See Ryan*, 228 Ariz. 42, ¶ 39, 262 P.3d at 873 (court will not reverse for harmless error).

¶13 RRFD further contends the trial court erred by ordering the city to pay production costs specified for public records under A.R.S. § 39-121.01, arguing the records are medical records "governed by A.R.S. § 12-2295." But in its memorandum filed below on "fees and charges for redacting and copying," RRFD concluded that neither statute "provide[s] specific guidelines" and "[t]he only difference is that A.R.S.

§ 12-2295(A) recites a reasonableness standard whereas A.R.S. § 39-121.01(D)(1) does not" and "[e]ither way, [Robles] must pay RRFD's fees and charges for redacting and copying." Because RRFD conceded below that the statutes required the same result, it has forfeited the opportunity to argue otherwise on appeal. *See City of Tempe v. Fleming*, 168 Ariz. 454, 456, 815 P.2d 1, 3 (App. 1991) ("arguments not made at the trial court cannot be asserted on appeal"); *see also Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) (purpose of requiring party to make specific objection in trial court is to give court an opportunity to rule before appellant claims error in this court).

¶14 Robles requests attorney fees on appeal, but fails to cite any authority supporting the request. Because Robles cites no basis for the award of attorney fees, we deny the request. *See Ezell v. Quon*, 224 Ariz. 532, ¶ 31, 233 P.3d 645, 652 (App. 2010); *see also* Ariz. R. Civ. App. P. 21(c)(1). RRFD requests attorney fees under A.R.S. § 12-341.01(C), which provides attorney fees if a claim "constitutes harassment, is groundless and is not made in good faith" and under A.R.S. § 12-349(A), which provides for attorney fees if a claim is "without substantial justification," "solely or primarily for delay or harassment" or if a party "[u]nreasonably expands or delays the proceeding" or "[e]ngages in abuse of discovery." Because RRFD does not specify which if any of Robles's actions fall under which portion of the statutes, and we do not find that the statutes apply, we deny RRFD's request for attorney fees.

Conclusion

¶15 For the foregoing reasons, we affirm.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge