



DIVISION ONE  
FILED: 01/13/2011  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DAVID LAKE, ) No. 1 CA-CV 10-0232  
)  
Plaintiff/Appellant, ) DEPARTMENT B  
)  
v. ) Maricopa County  
) Superior Court  
CITY OF PHOENIX, a political ) No. LC2006-000835-001 DT  
subdivision of the State of )  
Arizona; FRANK FAIRBANKS, in his )  
official capacity; MARIO )  
PANIAGUA, in his official )  
capacity; JACK HARRIS, in his )  
official capacity, ) **DECISION ORDER**  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

This appeal has been considered by Presiding Judge Diane M. Johnsen and Judges Michael J. Brown and John C. Gemmill. David Lake appeals the superior court's denial of his request for an award of attorneys' fees. Because we conclude that the superior court did not explain the grounds for its decision, and the record reveals that both the court and the parties may have misunderstood the intended scope of the attorneys' fees issue, we suspend the appeal and remand for further proceedings.

Lake, a City of Phoenix police officer, submitted several public records requests to the City, seeking a wide variety of records. Believing that his requests were not being produced promptly, or in some cases not at all, Lake filed a special

action against the City of Phoenix in superior court pursuant to Arizona Revised Statutes ("A.R.S.") section 39-121.02 (Supp. 2010). His petition alleged the wrongful denial of twenty-four public records requests. The superior court ultimately ruled in favor of the City in 2007.

On appeal, Lake challenged the denial of four of his requests and the promptness of five other requests for which the City did ultimately provide the records. *Lake v. City of Phoenix*, 220 Ariz. 472, 207 P.3d 725 (App. 2009). This court found that the City wrongfully denied three of Lake's requests. *Id.* at 483, ¶ 38, 207 P.3d at 736. As to the fourth request for the metadata of documents prepared on a computer, we affirmed the denial because we concluded metadata was not a public record under Arizona law. *Id.* at 481, ¶ 23, 207 P.3d at 734. We then determined that because the City had wrongfully refused three of Lake's requests, it was appropriate to remand to allow the court to determine whether Lake was entitled to attorneys' fees relating to those three requests. *Id.* at 483-84, ¶ 38, 207 P.3d at 736-37. Regarding promptness, we found sufficient evidence to support the superior court's ruling that the City had promptly provided the requested documents and also affirmed the superior court's denial of Lake's costs and attorneys' fees for the promptness claims. *Id.* at 485, ¶ 43, 207 P.3d at 738.

Our supreme court accepted review of only the metadata issue. The court vacated that portion of the court of appeals' decision, holding that metadata is an inherent part of the underlying document, and is subject to disclosure under public records law. *Lake v. City of Phoenix*, 222 Ariz. 547, 550-51, ¶¶ 12-14, 218 P.3d 1004, 1007-08 (2009). The supreme court remanded for "proceedings consistent with this opinion, including consideration of Lake's request for an award of attorney fees under A.R.S. § 39-121.02(B)." *Id.* at 551, ¶ 18, 218 P.3d at 1008.

On remand, Lake requested attorneys' fees of approximately \$70,000. The City objected on several grounds, including that Lake did not substantially prevail in the overall context of the litigation because he was successful only on four of the twenty-four requests referenced in his petition for special action. The City also objected to the amount of fees requested, contending that Lake should not be awarded fees for unsuccessful claims and that some of the amounts claimed were unreasonable. The superior court denied Lake's request for fees with no explanation and Lake appealed to this court.

Lake requested fees pursuant to A.R.S. 39-121.02(B), which reads:

The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person

seeking public records has *substantially prevailed*. Nothing in this paragraph shall limit the rights of any party to recover attorney fees pursuant to § 12-341.01, subsection C, or attorney fees, expenses and double damages pursuant to § 12-349.

(Emphasis added.) The prior version of the statute, in effect until May 2006, provided as follows:

If the court determines that a person was *wrongfully denied* access to or the right to copy a public record and if the court finds that the custodian of such public record acted in *bad faith, or in an arbitrary or capricious manner*, the superior court may award to the petitioner legal costs, including reasonable attorney fees, as determined by the court.

A.R.S. § 39-121.02(B) (2001) (emphasis added). By removing the language requiring a showing that the custodian acted improperly, it is plain that the legislature intended to lower a plaintiff's burden in showing entitlement to fees. See Act of May 9, 2006, 2006 Ariz. Sess. Laws, ch. 249, S.B. 1225 Fact Sheet (2nd Reg. Sess.) (stating that purpose of the amendment was "to more liberally award [attorneys' fees] against state agencies if the plaintiff substantially prevails").

Section 39-121.02(B) has not been analyzed in a reported decision in the context presented here; however, the statute must be applied consistent with the purpose of Arizona's public records law, which serves to "open government activity to public scrutiny" and reflects a "strong policy favoring open disclosure

and access." *Griffis v. Pinal Cnty.*, 215 Ariz. 1, 4, ¶ 11, 156 P.3d 418, 421 (2007); *Cox Ariz. Publ'ns, Inc. v. Collins*, 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993).

Here, Lake requested fees based on his assertion that he "substantially prevailed." Both this court and the supreme court remanded for a determination of fees. Because Lake prevailed on four of his public record requests, the question of whether he substantially prevailed pertains only to those four requests. His request for fees incurred with respect to his other public records requests previously challenged on appeal—relating to promptness—was expressly denied by the superior court in 2007 and was affirmed by this court in 2009. Thus, the City's attempts to turn this issue into a determination of whether Lake was successful on all of the numerous requests he originally made, and similarly, Lake's request for an award of all fees incurred in the litigation, are misplaced.

The focus of the fees proceeding resulting from our decision and that of the supreme court is narrow: whether Lake should be awarded attorneys' fees for his efforts relating to the four requests on which he prevailed either in this court or the supreme court. Although consideration of whether a party has prevailed in litigation is typically a question the superior court addresses in the first instance, based on the unique posture of Lake's fee request and in the interests of judicial

economy, we find as a matter of law that Lake substantially prevailed on these four claims. See *Kadish v. Ariz. State Land Dep't*, 177 Ariz. 322, 333, 868 P.2d 335, 345 (App. 1993) ("As the United States Supreme Court has stated '[a] request for attorney's fees should not result in a second major litigation.'" (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983))).

Because the superior court did not provide any reasoning for its decision, and in light of both parties' apparent misunderstanding of the scope of the fees proceeding, we are unable to determine whether the superior court recognized that Lake substantially prevailed when the court entered its order denying fees. As such, no reasonable basis in the record supports the superior court's denial of fees. See *Associated Indem. v. Warner*, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985) (recognizing that although the better practice is to include reasons for a denial of a fee request, the court affirmed without such reasons because "there exists a reasonable basis in the record upon which the trial judge could have denied attorney's fees"); *Grand Real Estate v. Sirignano*, 139 Ariz. 8, 14, 676 P.2d 642, 648 (App. 1983) (concluding that an order denying fees must be supported by "some reasonable factual justification" for the denial). Moreover, the superior court's order here failed to comply with the rules of procedure for

special actions, which requires that "the grounds of the decision shall be stated in the judgment." Ariz. R.P. Spec. Act. 6.

For these reasons, we remand to the superior court for reconsideration of its order denying Lake's fee requests, as well as the consideration of whether Lake should be awarded additional fees incurred in connection with this appeal.

Accordingly,

**IT IS ORDERED** remanding this case to the superior court for reconsideration of Lake's request for attorneys' fees consistent with this order.

**IT IS FURTHER ORDERED** that the superior court shall issue a written decision addressing Lake's fee request, which shall include the findings and conclusions upon which the decision is based.

/s/

---

DIANE M. JOHNSEN, Presiding Judge

/s/

---

MICHAEL J. BROWN, Judge

/s/

---

JOHN C. GEMMILL, Judge