

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

KOKI FOX 23 NEWS,)
)
 Plaintiff/Appellee,)
)
 and)
)
 WORLD PUBLISHING COMPANY,)
 a/k/a TULSA WORLD,)
)
 Intervener/Appellee,)
)
 vs.)
)
)
 DEPARTMENT OF HUMAN)
 SERVICES,)
)
 Defendant/Appellant.)

FILED
 COURT OF CIVIL APPEALS
 STATE OF OKLAHOMA

MAY 25 2012

MICHAEL S. RICHIE
 CLERK

Case No. 109,281
 (Companion with
 Case No. 108,446)

APPEAL FROM THE DISTRICT COURT OF
 TULSA COUNTY, OKLAHOMA

HONORABLE LINDA G. MORRISSEY, TRIAL JUDGE

REVERSED

Charles L. Waters
 General Counsel
 Joseph W. Streatly
 Richard W. Freeman, Jr.
 Assistant General Counsel
 DEPARTMENT OF HUMAN SERVICES
 Tulsa, Oklahoma

For Department of Human
 Services

James E. Weger
Sara C. Smith
JONES, GOTCHER & BOGAN, P.C.
Tulsa, Oklahoma

For KOKI Fox 23 News

J. Schaad Titus
Jessica E. Rainey
Jessica Fu
TITUS HILLIS REYNOLDS LOVE
DICKMAN & MCCALMON
Tulsa, Oklahoma

For World Publishing
Company

OPINION BY JERRY L. GOODMAN, PRESIDING JUDGE:

Department of Human Services (DHS) appeals the February 24, 2011, order awarding KOKI Fox 23 News (KOKI) and World Publishing Company a/k/a Tulsa World's (Tulsa World) (collectively "Appellees") application for an attorney's fee and costs in the amount of \$55,455.00 and \$3,827.52, respectively. Based upon our review of the facts and applicable law, we reverse.

PROCEDURAL HISTORY

This is the companion case to Appeal No. 108,446, also issued this date.¹ The facts are set out more extensively in the companion case. Only those facts relevant to this appeal will be included.

After its Open Records request was denied, KOKI filed suit seeking an "Order For Disclosure of Records" pursuant to 10 O.S.2001, § 7005-1.2 seeking to

¹ By order filed on March 24, 2011, the Oklahoma Supreme Court ordered Appeal Nos. 108,446 and 109,281 to be companion cases.

compel DHS to release certain records pertaining to all foster parents in the State of Oklahoma.² By order entered June 3, 2010, the trial court entered judgment in favor of Appellees, finding they had “shown a compelling reason that the inspection, release and disclosure of the Requested Information was necessary for the protection of a legitimate public/private interest”³ Appellees subsequently filed a motion for an attorney’s fee and costs pursuant to 51 O.S.2001 and Supp. 2005, § 24A.17. DHS objected. After a hearing on November 10, 2010, the court granted Appellees’ request, awarding fees of \$55,455.00 and costs of \$3,827.52 by order filed on February 24, 2011. DHS appeals.

STANDARD OF REVIEW

Whether a party is entitled to a statutory attorney’s fee is a legal question. *Finnell v. Jebco Seismic*, 2003 OK 35, ¶ 7, 67 P.3d 339, 342. Questions of law are subject to a de novo standard of review. *Weeks v. Cessna Aircraft Co.*, 1994 OK CIV APP 171, ¶ 5, 895 P.2d 731, 733 (approved for publication by order of the Oklahoma Supreme Court). The appellate court exercises “plenary, independent, and nondeferential authority when reexamining a trial court’s legal rulings.” *Neil*

² Renumbered as 10A O.S. § 1-6-102 by Laws 2009, HB 2028, c. 233, § 270, emerg. eff. May 21, 2009.

³ Section 7005-1.2(D) provides: “An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records and a determination ..., with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.”

Acquisition, L.L. C. v. Wingrod Inv. Corp., 1996 OK 125, ¶ 4 n. 1, 932 P.2d 1100, 1103 n. 1.

ANALYSIS

On appeal, DHS asserts the trial court erred in awarding Appellees an attorney's fee and costs pursuant to the attorney's fee provision of the Open Records Act (Act), 51 O.S.2001 and Supp. 2005, § 24A.17. DHS contends § 24A.17 only applies where access to a public record is denied. DHS notes Appellees sought the confidential agency records at issue, *i.e.*, foster parent records, pursuant § 7005-1.2(D) of the Children's Code, not the Open Records Act.

Appellees disagree, asserting the genesis of this case was DHS's initial denial of KOKI's open records request pursuant to DHS's own conclusion the records were confidential pursuant to § 7005-1.2(A), ultimately forcing KOKI to file the present action under § 7005-1.2(D). Appellees contend the Act and the Children's Code should be viewed together and that § 7005-1.2 was designed as an exception to the confidentiality exception of the Act.

We agree with DHS that the Act does not serve as a basis for an attorney's fee in this case. As we interpret § 24A.17 of the Act, an aggrieved private party, one whose requests for records has been denied and who ultimately obtains those records under the Act, may be awarded an attorney's fee as the successful party. Section 24A.17(B) clearly provides the award of an attorney's fee in only one (1)

fact situation -- when a person denied access to a public record initiates a suit for declaratory or injunctive relief and is ultimately successful. See *Merrill v.*

Oklahoma Tax Comm'n, 1992 OK 53, 831 P.2d 634. In the present case, although Appellees' initial Open Records' request was denied, Appellees filed the present suit, and were ultimately granted access to the requested records, pursuant to the Children's Code, § 7005-1.2(D). The present suit was clearly not filed pursuant to the Act and an award of fees and costs pursuant to § 24A.17(B) was therefore in error. The February 24, 2011, order granting Appellees' joint application for an attorney's fee and costs in the amount of \$55,455.00 and \$3,827.52, respectively, is reversed.

REVERSED.

RAPP, J., and THORNBRUGH, J., concur.

May 25, 2012