FILED
SUPREME COURT
OF GUAM
AUG 1 '00

IN THE SUPREME COURT OF GUAM

GUAM RADIO SERVICES, INC.
d/b/a KOKU-FM HIT RADIO 100,
Plaintiff-Appellant

vs.

GUAM ECONOMIC DEVELOPMENT AUTHORITY
Defendant-Appellee

OPINION

Cite as: 2000 Guam 23

Supreme Court Case No. CVA99-039
Superior Court Case No. CV2003-98

Appeal from the Superior Court of Guam
Argued and submitted on March 7, 2000
Hagåtña, Guam

Appearing for the Plaintiff-Appellant:
Phillip D. Isaac, Esq.
Carlsmith Ball
Suite 401, Bank of Hawaii Bldg.
134 W. Soledad Ave.
P. O. Box BF
Hagåtña, Guam 96932

Appearing for the Defendant-Appellee:
Lawrence J. Teker, Esq.
Gayle & Teker
Suite 200, Gayle & Teker Bldg.
330 Hernan Cortez Ave.
Hagåtña, Guam 96910

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, Associate Justice; ALBERTO C. LAMORENA III, Designated Justice

SIGUENZA, J.:

[1] The following case discusses the granting of attorney's fees under the Sunshine Act, Title 5 GCA § 10101 *et seq.*, (1993). The appellant argues that the lower court incorrectly applied the four-factor analysis used in determining attorney's fees. The appellees, on the other hand, claim that the trial court had discretion to refuse an award and that there is no valid reason for reversal. Based upon the following analysis, we affirm the lower court's decision and find that no abuse of discretion occurred.

PROCEDURAL AND FACTUAL BACKGROUND

[2] On June 23, and August 18, 1998, Guam Radio Services, Inc. d/b/a KOKU-FM Hit Radio 100 (hereinafter "KOKU") twice requested that the Guam Economic Development Authority (hereinafter "GEDA") provide it with information regarding delinquent loans from January 1998 to the present, including the names of those individuals and companies in default as well as the length of time in which the named parties were in default. GEDA refused to deliver the materials. Consequently, on August 24, 1998, KOKU filed a complaint with the trial court seeking an order that GEDA produce the relevant materials under the rules of the Sunshine Act. The trial court held in favor of KOKU. *Guam Radio Services, Inc. v. Guam Economic Development Authority,* CV2003-98 (Super. Ct. Guam Dec. 9, 1998). On January 12, 2000, a majority of this court affirmed the lower court's holding that GEDA must deliver documents in accordance with the Act. *Guam Radio Services, Inc. v. Guam Economic Development Authority,* 2000 Guam 1, ¶ 25. Chief Justice Cruz

dissented. *Id.* at ¶¶ 26-35.

[3] Before this court heard the case on its primary issue, KOKU filed a suit with the Superior Court seeking attorney's fees for their original case. First, the trial court ruled that KOKU had substantially prevailed in its suit, a threshold requirement for consideration in granting attorney's fees. *Guam Radio Services, Inc. v. Guam Economic Development Authority,* CV2003-98 (Super. Ct. Guam Sept. 8, 1999). Next, the trial court stated that it must consider four factors to determine whether KOKU deserved attorney's fees: 1) benefit to the public, if any, from the release of the documents; 2) commercial benefit to the complainant; 3) the nature of the complainant's interest in the records sought; and 4) whether the government's withholding of the records had a reasonable basis in law. *Id.* (citing *Guam Contractors Ass'n v. U.S. Dep't of Labor,* 570 F.Supp. 163, 167 (N.D. Cal. 1983)). Regarding the first factor, the trial court ruled that the public received a benefit from having the documents released and ensuring that GEDA obeys the law. It held that KOKU received a commercial benefit from the receipt of the documents, thus suggesting that KOKU is not worthy of an award when its motives lacked altruism. The trial court stated that KOKU had no direct interest in the materials, thus failing the third prong. Finally, the trial court decided that GEDA had a reasonable basis for withholding the documents. Having decided that KOKU only met the first of the four factors, the trial court denied the radio station any attorney's fees. *Id.*

[4] KOKU appealed these findings in a timely manner in accordance with Guam R. App. P. 4(a).

DISCUSSION

[5] This court has jurisdiction according to Title 7 GCA § 3101, (1994). Both parties agree that this court should review the trial court's decision for an abuse of discretion. *See Parkland Dev., Inc.*

v. Anderson, 2000 Guam 8, ¶ 5; *Midsea Indus., Inc., v. HK Eng'g, Ltd.,* 1998 Guam 14, ¶ 14 (evaluating a trial court's motion to set aside a default judgment).[1]

[6] This court has consistently defined an abuse of discretion as a trial court decision "'exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.'" *People v. Quinata,* 1999 Guam 6, ¶ 17; *People v. Tuncap,* 1998 Guam 13, ¶ 12 (quoting *Int'l Jensen, Inc., v. Metrosound U.S.A., Inc.,* 4 F.3d 819, 822 (9th Cir. 1993)). A lower court abuses its discretion when it fails to apply the correct law or if it rests its decision on a clearly erroneous finding of material fact. *Tuncap,* 1998 Guam 13 at ¶ 13. Most importantly, under this standard, we cannot reverse a decision unless it has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant facts. *Quinata,* 1999 Guam 6 at ¶ 17; *Tuncap,* 1998 Guam 13 at ¶ 12 (citation omitted). The abuse of discretion standard is meant to insulate a trial court's decisions from any second-guessing by an appellate court. 1 STEVEN ALAN CHILDRESS & MARTHA S. DAVIS, FEDERAL STANDARDS OF REVIEW § 4.21 (3rd ed. 1999). The abuse of discretion standard acts as a dispositive underpinning to our decision in this case.

[7] The relevant law in this dispute, Title 5 GCA § 10107(d), (1993), states: "The court may assess against the government of Guam reasonable attorney fees and other litigation costs reasonably incurred in any case under this Section in which the complainant has substantially prevailed." Because the attorney's fees provision in the federal Freedom of Information Act (hereinafter

[1]Neither *Parkland Development* nor *Midsea* involved attorney's fees. However, the cases on attorney's fees that this court has written were reviewed *de novo* as they addressed sanctions pursuant to Guam R. Civ. P. 11. *See Seafood Grotto v. Leonardi,* 1999 Guam 30, ¶ 6; *Taijeron v. Kim,* 1999 Guam 16, ¶ 6; *People v. Manibusan,* 1998 Guam 22, ¶ 6; *Sumitomo Constr. Co., Ltd., v. Zhong Ye., Inc.,* 1997 Guam 8, ¶ 9.

"FOIA"), found at 5 U.S.C. § 552(a)(4)(E) (1996), is nearly identical to the Sunshine Act, cases concerning the federal rule provide guidance to the court.[2] Legislators included the attorney's fees provision in order to encourage plaintiffs to file claims in cases that would otherwise be too costly for them to pursue. *Guam Contractors,* 570 F.Supp. at 169. Nevertheless, the legislators wanted courts to be thoughtful and cautious in granting this award. Thus, they listed four factors that courts could consider in making their decisions on attorney's fees. *See Vermont Low Income Advocacy Council, Inc. v. Usery,* 546 F.2d 509, 513 (2nd Cir. 1976) [hereinafter *VLIAC*]. The trial court used these four factors in determining that it would not award KOKU attorney's fees.

[8] In this appeal, KOKU asserts that the news media has no special ability to make governmental agencies adhere to the Sunshine Act and that relevant case law includes news sources under the list of plaintiffs not considered to be seeking a commercial benefit. Thus it argues that the trial court grossly erred in its analysis of the second and third factors, respectively. On the final factor, it claims that GEDA was obdurate and acted in bad faith, thus lacking a reasonable basis for withholding documents. GEDA, however, states that judges have broad discretion in awarding these fees and argues that no clear violation has occurred that would necessitate a reversal by this court.

[9] Traditionally, a court did not have the power to grant the prevailing party attorney's fees unless lawmakers specifically provided them with such authority in a statute. *Alyeska Pipline Co. v. Wilderness Soc'y,* 421 U.S. 240, 247, 95 S. Ct. 1612,1616 (1975). In some types of litigation, those involving antitrust or civil rights matters for example, granting attorney's fees has been a

[2] 5 U.S.C. § 552(a)(4)(E) states: "The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed."

mandatory award for successful plaintiffs. *Id.* at 260-62, 95 S. Ct. at 1624. Contrarily, in both the Sunshine Act and the FOIA, the laws declare that a judge *may* award attorney's fees to the plaintiff, thus indicating that such an award was intended to be permissive, rather than mandatory. *See* Title 1 GCA § 715(9), (1995). In both civil rights and FOIA cases, legislators intended to compensate plaintiffs who ended up forfeiting valuable time and monetary resources in courts trying to get agencies to adhere to the law. However, unlike in civil rights cases, the creators of the FOIA purposely chose not to require a mandatory attorney's fees award under the FOIA. *Lovell v. Alderete,* 630 F.2d 428, 431 (5th Cir. 1980); *Blue v. Bureau of Prisons,* 570 F.2d 529, 533 (5th Cir. 1978). In each of the legislators' multiple drafts of the FOIA's section on attorney's fees, lawmakers noted that judges have discretion on the matter and warned that granting fees to successful plaintiffs should never be an automatic gesture. *See VLIAC,* 546 F.2d at 512-13. Since its enactment, most FOIA attorney's fees cases clearly emphasize that such awards are discretionary. *United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Indus., Local 598 v. Dep't of Army Corps of Eng'rs,* 841 F.2d 1459, 1461 (9th Cir. 1988) [hereinafter *Local 598*]; *Church of Scientology v. U.S. Postal Serv.,* 700 F.2d 486, 489 (9th Cir. 1983); *Ginter v. IRS,* 648 F.2d 469, 471 (8th Cir. 1981); *Lovell,* 630 F.2d at 434; *Nationwide Bldg. Maintenance, Inc., v. Sampson,* 559 F.2d 704, 705-06 (D.C. Cir. 1977); *VLIAC,* 546 F.2d at 513. KOKU contends that the trial court's discretion is not absolute. Nevertheless, we maintain that a trial court's discretion on awarding attorney's fees under the Sunshine Act is quite broad and substantial.

[10] Deciding whether a trial court abused its discretion in granting or denying attorney's fees under FOIA depends upon determining whether and how the trial court conducted the four-factor analysis. In the early stages of the fee provision's drafting, lawmakers altered the four-factor analysis from a requirement into a recommendation because the Senate thought a mandatory analysis would be "too delimiting." *VLIAC,* 546 F.2d at 513. The flexibility of the guidelines does not signify that a judge can avoid the four-factor analysis. Instead, lawmakers made the analysis flexible in order to permit judges to consider additional matters specific to individual cases. *See Church of Scientology,* 700 F.2d at 492; *Exner v. Federal Bureau of Investigation,* 443 F.Supp. 1349, 1352 (S.D. Cal. 1978), *judgment aff'd,* 612 F.2d 1202 (9th Cir. 1980). Since the time of the provision's enactment, more courts have stated that the judges must conduct an examination of the four factors before awarding fees. *See Local 598,* 841 F.2d at 1461; *Lovell,* 630 F.2d at 431; *Blue,* 570 F.2d at 533.

[11] Courts have disagreed about whether the analysis is a balancing act or whether a plaintiff must meet each of the four factors. *Compare Ginter,* 648 F.2d at 470 (promoting balancing), *and Lovell,* 630 F.2d at 433 (promote balancing), *with Republic of New Afrika v. FBI,* 645 F.Supp. 117, 120 (D.D.C. 1986) (opining that "a court should not regard any one factor as conclusive."), *and Blue,* 570 F.2d at 534 (holding that "it was an abuse of discretion to neglect the three remaining factors entirely [in not granting the fees]."); *but see Cotton v. Heyman,* 63 F.3d 1115, 1120-21 (D.C. Cir. 1995) (holding both that too much weight was given to the public interest prong and that the court erred in not discussing the reasonable basis prong at all). Nonetheless, complete failure to conduct the four-factor analysis or to consider any single factor thereof have constituted the only situations in which appellate courts have reversed a lower court's decision on attorney's fees. *Chesapeake Bay*

Found., Inc., v. U.S. Dep't of Agric., 11 F.3d 211, 216 (D.C. Cir. 1993) (reversed for failure to consider the fourth factor); *Local 598,* 841 F.2d at 1464 (reversed for failure to consider the second and third factors); *Church of Scientology,* 700 F.2d at 495 (reversed for failure to mention any of the four factors in its decision); *Blue,* 570 F.2d at 534 (reversed for failure to include three of the four factors in its analysis). Even when a reversal is granted, it is usually accompanied with a remand. *See, e.g., Church of Scientology,* 700 F.2d at 494; *Nationwide Bldg.*, 559 F.2d at 716. No court has reversed a decision merely because it disagreed with part of the lower court's four-factor analysis. In obedience to the principles of the abuse of discretion standard, appellate courts purposely tend to avoid telling the lower courts what they should decide after discussing the four factors.

[12] In the trial court's perception, KOKU is not the resource-deprived party that lawmakers imagined when they decided to compensate plaintiffs who would otherwise avoid filing FOIA/Sunshine Act suits due to their great costliness. In essence, the trial court assumed that KOKU was not substantially burdened by having to pay attorney's fees and that the expense of this litigation would not prevent KOKU from seeking such information or covering such newsworthy topics in the future. *See Guam Radio Services,* CV2003-98 (Super. Ct. Guam Sept. 8, 1999). The trial court met its duty by mentioning all of the four factors and explaining if it thought KOKU qualified under each one. Even if we would have come to a different conclusion on some of the factors, we cannot say the trial court abused its discretion by deciding differently.[3]

[3] In fact, we firmly disagree with the trial court's ruling on the second and third factors of the FOIA attorney's fees provision. Factors two and three of the four-pronged analysis are often considered together. *Local 598,* 841 F.2d at 1462; *Church of Scientology,* 700 F.2d at 494; *see also Lovell,* 630 F.2d at 432-33. In the trial court's opinion, lawmakers did not have a news service like KOKU in mind when they determined who they wanted to reward for bringing claims under the Sunshine Act. The trial court writes, "Plaintiff herein is not an ordinary citizen. . .The Plaintiff also seeks the information for commercial gain. . . .It is not a watchdog group or similar type [of] non-profit organization." *Guam Radio Servs., Inc.,* CV2003-98 (Super. Ct. Guam Sept. 8, 1999). However, the *Local 598* court

[13] Based upon the aforementioned discussion, we see no reason to conclude that the trial court abused its discretion in determining attorney's fees under the Sunshine Act. Nothing in the trial court's decision was completely wrong or obviously lacking as the abuse of discretion standard demands. Nothing occurred in this case that was more egregious than in the comparable FOIA cases which also usually uphold the trial court's findings. The trial court's reasoning does not reach the severely faulty terrain where we would reverse under this high standard.

CONCLUSION

[14] We find that the trial court did not abuse its discretion in making its finding. Therefore, the trial court's decision is **AFFIRMED.** The appellant shall receive no attorney's fees for its suit despite having substantially prevailed in the outcome.

PETER C. SIGUENZA
Associate Justice

BENJAMIN J.F. CRUZ
Chief Justice

stated: "Inquiry into the 'nature of interest' should lead the court to consider whether the claimant seeks to protect a private, purely commercial interest as opposed to a scholarly, *journalistic*, or public interest." *Local 598,* 841 F.2d at 1462 (emphasis added) (citation omitted). We believe a news radio program would fit under the journalistic exception. In *Nationwide Bldg.*, the court specifically noted that when the Senate was defining these factors, it decided that "news interests should not be considered commercial interests." *Nationwide Bldg.* ,559 F.2d at 712.

LAMORENA, D.J.: CONCURRING IN PART, DISSENTING IN PART:

[15] I concur with the majority that the abuse of discretion standard protects lower court decisions from constant appellate oversight. Trial court judges have broad discretion in determining whether plaintiffs deserve attorney's fees under the Sunshine Act or FOIA. Nevertheless, the trial court made a clear error in its judgment that even the abuse of discretion standard would not and should not allow this court to overlook.

[16] The second factor in the fee provision analysis involves the commercial benefit to the complainant. The trial court asserted, "[T]he Plaintiff herein is not an ordinary citizen. . . . The Plaintiff also seeks the information for commercial gain. . . .It is not a watchdog group or similar type [of] non-profit organization." *Guam Radio Services v. Guam Economic Development Authority,* CV2003-98 (Super. Ct. Guam Sept. 8, 1999). However, *Nationwide Building Maintenance, Inc. v. Sampson* noted that when the Senate was defining these factors, it clearly decided that "news interests should not be considered commercial interests." *Nationwide Bldg. Maintenance, Inc. v. Sampson,* 559 F.2d 704, 712 (D.C. Cir. 1977).

[17] The third factor involves the nature of the complainant's interest in the records sought. The trial court maintained that:

> [t]he Plaintiff possesses great bargaining power in its ability to shape the news it presents to the public. Such power naturally would exert greater pressure on an agency than any threat of the payment of legal fees. . . .[KOKU] is in the business of gathering information and publicizing it for public consumption.

Guam Radio Services, CV2003-98 (Super. Ct. Guam Sept. 8, 1999). Another court discussing FOIA's fee provision stated: "Inquiry into the 'nature of interest' should lead the court to consider whether the claimant seeks to protect a private, purely commercial interest as opposed to a scholarly,

journalistic, or public interest." *United Ass'n of Journeymen and Apprentices of Plumbing and Pipefitting Indus., Local 598 v. Dep't of Army Corps of Eng'rs,* 841 F.2d 1459, 1462 (9th Cir. 1988) (emphasis added) (citation omitted). A judge should consider the work of a news source as lying within the ambit of journalistic endeavors or the public interest, rather than having a private and commercial purpose.

[18] Legislators included the aforementioned factors in the fees provision because they wanted judges to exclude those cases in which parties with definite pecuniary interests could have sought information without employing the Sunshine Act. *See generally, Local 598,* 841 F.2d at 1462. Neither GEDA nor the trial court have pointed to anything to suggest that KOKU would receive some significant, financial gain from presenting this information on defaulted loans to the public. They do not explain how this news is more beneficial than any other newsworthy event. They do not show how coverage on this issue would place KOKU in a more advantageous position than its news-reporting peers or rivals. The trial court claimed that KOKU had great bargaining power to make agencies react, yet the facts in the case, and the fact that a case had to be filed at all, indicate that KOKU has no such exceptional influence. These important points should have been considered when the trial court conducted its analysis of the four factors.

[19] While the majority chooses to mention this passively in a footnote, I believe these issues must be emphasized in this opinion. Regardless of whether the four-factor analysis requires a balancing test or demands that all four factors be met, a trial court that misapplies two of the four factors has not conducted the analysis in a thorough and satisfactory manner. Under the majority's decision, the appellate court would never reverse any trial court's analysis which merely mentions all four factors. Through our review of this case, we should inform the parties and lower courts that the attorney's

fees provision requires a stricter analysis than that which the lower court conducted. By failing to make this conclusion, this court risks suggesting to the lower courts that they have absolute discretion with this section of the Sunshine Act. Therefore, I cannot join in with the majority's unconditional affirmation of the trial court's decision.

[20] In following several FOIA precedents, I believe that this court should remand this matter to the trial court. The court should order a reconsideration of the four factors with instructions that a news source would satisfy the second and third factors. So long as the trial court follows our instructions on those two factors, it still has discretion on whether to grant KOKU attorney's fees. I would approve of any decision under the condition that the trial court apply each of the four factors *properly.*

[21] I, therefore, both **CONCUR IN PART** and **DISSENT IN PART** with the majority.

ALBERTO C. LAMORENA, III
Designated Justice