

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 GRAY MEDIA GROUP, INC.,)
 Plaintiff,)
)
 v.)
)
 KRISTIN GRAZIANO, IN HER)
 OFFICIAL CAPACITY AS SHERIFF)
 OF CHARLESTON COUNTY,)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 C/A NO.: 2023-CP-10-03027

**ORDER AWARDING PLAINTIFF’S
 ATTORNEYS’ FEES AND COSTS**

This matter is before the Court arising out of Gray Media Group, Inc.’s (“Plaintiff”) Complaint pursuant to the South Carolina Freedom of Information Act (“FOIA”) for Declaratory Judgment and Injunctive Relief filed on June 22, 2023. Defendant, Kristin Graziano, in her official capacity as Sheriff of Charleston County (“CCSO”), filed an Answer and Request for Hearing on June 28, 2023, and on July 6, 2023, Jamie Komoroski (“Inmate” or “Komoroski”) filed a Notice of Motion and Motion to Intervene. Pursuant to S.C. Code Ann. § 30-4-100, a hearing was held on July 10, 2023, with appearances by counsel of record for all parties. With the consent of Plaintiff and Defendant, the Court granted Inmate’s Motion to Intervene. After careful consideration of the pleadings, submissions by the parties, applicable legal authority, and oral argument of counsel at the hearing, the Court entered a Final Order on August 1, 2023, finding for the Plaintiff and ordering the relief sought by Plaintiff. The Court also awarded Plaintiff’s attorneys’ fees. The Court has considered all briefings submitted by the parties regarding attorneys’ fees and costs. The Court orders Defendant to pay the Plaintiff’s Attorney’s fees and costs in the amount of Thirty-Three Thousand One Hundred Seventy-Five Dollars (\$33,175.00).

HISTORY OF THE CASE

On the evening of April 26, 2023, at 10:20 pm, Jamie Komoroski crashed her Toyota into a golf cart on a public road in Folly Beach, South Carolina. The golf cart was transporting a just-married bride and groom and two others from a wedding reception on Folly Beach Island. The bride was killed, her new husband, another passenger and the golf cart driver suffered severe injuries. Komoroski was arrested at the scene. Komoroski was treated at MUSC, and then detained at the Charleston County Detention Center. She was charged with three counts of felony DUI resulting in great bodily injury and one count of reckless homicide. Since her arrest, she has been held at the Charleston County Detention Center, having been denied bond.

On May 4, 2023, *The Post & Courier* sent a FOIA request to the CCSO requesting “copies of inmate Jamie Komoroski’s communications and correspondence with people outside of the Sheriff Al Cannon Detention Center between April 28 and the date this request is processed.” On May 17, 2023, CCSO informed *The Post & Courier* that the information requested in the May 4, 2023 FOIA request was ready to be picked up at the CCSO. CCSO further informed *The Post & Courier* that “a couple of the calls were not included because no connection was ever made. There was one that included some legal info that was omitted. Finally, two were omitted as they contained personal info (passwords, etc.)” On May 19, 2023, *The Post & Courier* published an article related to the statements made by Inmate in her recorded jail calls and recorded visits. The article cited and relied upon the public records provided by CCSO in response to its May 4, 2023 FOIA request.

On May 22, 2023, Plaintiff sent a FOIA request to CCSO for “inmate intake form for Jamie Komoroski on April 28th, 2023...copies of calls made by Jamie Komoroski between April 28th, 2023 and present from the Charleston County Jail...all video conference calls made by Jamie Komoroski between April 28th, 2023 and present from the Charleston County Jail.” By letter dated May 22, 2022, Inmate’s counsel raised privacy objections to the release of any of the material

sought by Plaintiff. On May 24, 2023, *The Post & Courier* sent a second FOIA request to CCSO for “copies of inmate Jamie Komoroski’s communications and correspondence with people outside of the Sheriff Al Cannon Detention Center between May 15, 2023 and the date this request is processed.” By letter dated May 6, 2023, the Ninth Circuit Public Defender, which does not represent Ms. Komoroski, also raised privacy objections to the release of communications sought by *The Post & Courier* and by Plaintiff.

On June 6, 2023, CCSO sent the following response to Plaintiff, *The Post & Courier*, and multiple other news outlets:

“Subsequent to a prior FOIA production, counsel and other interested parties have raised concern that similar record releases would materially interfere with the administration of justice. For this reason, we are acting in good faith and denying release of communication records within FOIA exemptions stated in S.C. Code of Law Sec. 30-4-40 (B) and (C) for privacy and the administration of justice.”

On June 8, 2023, Plaintiff objected in writing to the denial of its request and made specific reference to CCSO’s prior disclosure of these public records to *The Post & Courier*. In response, CCSO informed Plaintiff that the prior release of records to *The Post & Courier* was “erroneous” and that CCSO had issued a “clawback request.” CCSO further cited an additional exemption in that “the release ‘(F) would endanger the life or physical safety of any individual.’” At no time did CCSO inform Plaintiff which exemptions applied to specific recordings. On June 9, 2023, Plaintiff submitted a FOIA request to CCSO for “all communications between CCSO and *The Post & Courier* regarding the erroneous production, to include a copy of the clawback request.” On June 23, 2023, CCSO provided responsive documents pursuant to this request to Plaintiff.

Plaintiff filed the present action on June 22, 2023, and on June 28, 2023, CCSO filed an Answer and Request for Hearing. On July 6, 2023, attorneys for Komoroski filed a Notice of

Motion and Motion to Intervene, which was consented to by the parties and granted by this Court at the hearing on this matter. At the Court's request, the parties submitted memoranda to the Court for consideration on July 7, 2023. The matter came before the Court for a hearing on July 10, 2023.

On August 1, 2023, the Court entered a Final Order on August 1, 2023, finding for the Plaintiff and ordering the relief sought by Plaintiff. Specifically, the Court found, among other things, the recorded calls and visits requested by Plaintiff to be public records pursuant to S.C. Code Ann. § 30-4-20(c); CCSO failed to determine which exemptions, if any, applied to the specific recordings, as required by S.C. Code Ann. § 30-4-40 and relevant case law pursuant to S.C. Code Ann. § 30-4-100; and the Plaintiff as the prevailing party may be awarded attorneys' fees and costs in this matter.

LEGAL STANDARD

Pursuant to S.C. Code Ann. § 30-4-100(B), “[i]f a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request.”

The South Carolina Supreme Court in *Buist v. Buist*, 410 SC 569, 766 S.E.2d 381 (2014), held that when considering whether to award attorneys' fees a court must apply the *Glasscock* or *EDM*¹ factors “to determine whether to award a fee, as well as the amount of the fee to award.” The six *Glasscock* factors enumerated by the South Carolina Supreme Court include: “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained;

¹ The E.D.M. factors, developed more narrowly for the context of a divorce proceeding, are less instructive in an insurance dispute, and therefore are not considered in the instant analysis, but are as follows: “(1) the party's ability to pay his/her own attorney's fee; (2) beneficial results obtained by the attorney; (3) the parties' respective financial conditions; (4) effect of the attorney's fee on each party's standard of living.” *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992).

(6) customary legal fees for similar services.” *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

RULINGS AND ORDERS

After careful consideration of all briefings by parties, including the supplemental declarations, both Affidavits of Attorneys’ fees submitted by Plaintiff, and review of the unredacted billing records submitted by counsel for Plaintiff, this Court finds that Plaintiff has demonstrated the requisite factors to allow this Court to render an award of attorneys’ fees in the full amount requested by the Plaintiff’s attorneys, pursuant to S.C. Code Ann. § 30-4-100(B).

1. Appropriateness of Fees Under Glasscock

The Court has carefully considered the Glasscock factors, as discussed fully herein and approves the full award of requested attorneys’ fees by the Plaintiff.

a. The nature, extent, and difficulty of the case

This action involves the request for public records under the South Carolina Freedom of Information Act and privacy issues related to recordings held by CCSO. Upon review of the Affidavit of Attorneys’ Fees, the Court observed the descriptions of work completed is of the nature and extent expected in this type of action. Further, given the lack of relevant case law on these specific issues as explained in the Court’s Final Order on August 1, and review of the Affidavit of Attorneys’ Fees, the first factor, the nature, extent, and difficulty of the case, weighs in favor of an attorney fee award.

b. The time necessarily devoted to the case

Second, considering time necessarily devoted to the case, over the course of the past months, Plaintiff’s counsel has devoted approximately 86.6 hours of billable time to this litigation against CCSO. The Court has carefully reviewed the time entries on both Affidavits of Attorneys’

Fees submitted in the amounts of \$29,056.00 and \$4,119.00. Upon review of the unredacted bills, the time and labor required was spent on legal research, strategy, drafting, communications related to the request of the recorded public records, among other necessary litigation practices.

The Court has reviewed the billing records by the Plaintiff and finds that the time spent devoted to this matter has been extensive and necessary. The Court finds that this factor weighs in favor of an attorney fee award.

c. Professional standing of counsel

Third, considering the professional standing of counsel, Plaintiff's counsel is in good standing with the South Carolina Bar and routinely practices in the Court of Common Pleas representing Plaintiffs against government entities. Further, the supplemental Affidavits on behalf of Attorney Mark A. Peper also support he is in good standing and has the required professional knowledge to be counsel. Additionally, the rates cited in Plaintiff's submissions are reasonable in light of local market rates and that this matter involved contentious litigation and complex issues. The Court finds counsel for Plaintiff is of the utmost professional standing.

d. Contingency of compensation

The Court agrees with Plaintiff is not this factor is not relevant to the present action.

e. Beneficial results obtained

On the issue of beneficial results obtained, Plaintiff's counsel ultimately was successful in obtaining the recorded jails calls and videos under the FOIA against CCSO. Further, the services facilitated and rendered by Plaintiff's counsel resulted in a favorable result. The Court therefore finds that the fifth factor weighs in favor of an attorney fee award.

f. Customary legal fees for similar services

Finally, this FOIA action and the litigation disputes involved complex and detailed issues of South Carolina law. The Court has reviewed the filed Affidavits regarding customary legal fees in this type of action in Charleston, South Carolina, the reasonableness of the number of hours billed, as well as the detailed billing records submitted by the Plaintiff, and finds the legal fees charged are customary for similar services by local counsel and outside counsel. This factor weighs in favor of an attorney fee award.

Therefore, carefully considering each *Glasscock* factor in turn, the Court finds the Plaintiff's counsel should be awarded the full amount they seek in attorneys' fees for their work associated with their efforts against CCSO.

The Court therefore orders Defendant to pay the Plaintiff's Attorney's fees and costs in the amount of Thirty-Three Thousand One Hundred Seventy-Five Dollars (\$33,175.00).

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Gray Media Group Inc VS Kristin Graziano , defendant, et al

Case Number: 2023CP1003027

Type: Order/Attorney Fees

So Ordered

Jean H. Toal