

STATE OF MISSOURI)

COUNTY OF SCOTLAND)

) ss.

IN THE CIRCUIT COURT OF SCOTLAND COUNTY, MISSOURI

RANDALL TOBLER, MD,)

PLAINTIFF,)

vs.)

SCOTLAND COUNTY MEMORIAL)
HOSPITAL et al)

DEFENDANT.)

CASE NUMBER 23SE-CC00015

Scotland County Circuit Court
Filed

NOV 08 2024

Memphis, Missouri
Julie Monroe, Circuit Clerk

JUDGMENT

Now on this 23rd day of September, 2024, the date set for the hearing of the Plaintiff's Petition, Count I, the Plaintiff, Randall Tobler, MD appears in person, and with his attorney Lowell D. Pearson and the Defendant Scotland County Memorial Hospital appears by its' Board Chair Lori Fulk, and with its' attorney Eric Packel. The cause is called by the Court, the parties announce ready and evidence is adduced, the case is submitted and taken under advisement by the Court to allow counsel to submit briefs in support of their positions.

Now on this 8th day of November, 2024 the Court having received and reviewed proposed findings of fact and conclusions of law filed by counsel, which the Court rejects same in favor of its' own judgment. The parties did not timely request findings of fact and conclusions of law prior to the submission of evidence and as such being duly informed the Court does find as follows:

1. That it has jurisdiction of the parties and subject matter of the action.

2. That the Plaintiff claims the Defendant Scotland County Memorial Hospital through its' chair of the SCH Board of Directors Loris Fulk, on August 15, 2022 and August 16, 2022 conducted closed meetings in violation of the

requirements of sections 610.020.2 and 610.020.4 RSMo. The meeting of August 15, 2022 was conducted in the home of Ms. Fulk in her basement, clearly in violation of the by-laws for the Hospital, which does not authorize this location for such a meeting. The minutes of this meeting cite 610.021 RSMo. as the basis for closing the meeting pursuant to this section, which was the discussion of legal matters, hiring, firing and discipline of employees and individually identifiable personnel information. The minutes claim the good cause for no notice and failure to meet in the regular meeting place was due to the potential financial and legal harm to SCH. Ms. Fulk testified that she only advised certain board members about this closed meeting, and only enough to make a quorum. She excluded certain board members including the Plaintiff and the public in general. When this interesting meeting was called to order Ms. Fulk discovered that she had failed to notify enough board members to have a quorum. She next called Joni Lloyd, whom had been excluded from notice of the meeting and who was at home with her husband watching a movie and asked her to come to her house for this meeting. Ms. Lloyd testified that this meeting was in the basement of Ms. Fulk's home, that there was no agenda, no call to order and that when she arrived all those gathered just started talking. Ms. Fulk on August 16, 2022 with notice to all board members called another closed meeting, with the same justification set out in the minutes of that meeting as was set out for the August 15, 2022 meeting . There was no statement as to why all Board members were notified of this meeting when not all had been notified of August 15, meeting. Ms. Fulk testified that she was forced to call these closed meetings as a result of her discovery that the Hospital was running low on cash on hand and in her opinion was within days of running out of cash, that she had questions on the operation of the pharmacy which showed a substantial amount of cash running through that account, she also found that the Board before she joined it, had authorized only one signature on its' accounts, which caused her to think that these accounts could be drained immediately leading to her claimed sense of immediate emergency. The evidence further indicated that no such threat had ever existed and that the Board had in 2014 authorized the one signature process. Ms. Fulk's action indicated that she some how had concluded that the Plaintiff and the board members that were excluded were responsible for her concerns. When questioned by the Court on her beliefs she admitted that she had no proof of any financial wrongdoing and that Plaintiff and the other board members who were excluded had not taken any funds from the hospital. Ms. Fulk further admitted that she was dealing with the shock of looking at financial records and admitted that the board had not been taking care of their financial business. Ms. Fulk further admitted before the August 15, 2022 meeting that she had been meeting with hospital employees at her home in secret and that due to the condition of her home driveway there was an area of her drive which was secluded from the road where these employees would hide their cars. Ms. Fulk further complained in her testimony that neither she nor any other member

of the board had been trained on the Sunshine Law. She further contented that she believed she had a right to provide notice of meetings to a select group of board members of her choice so long as she had a quorum.

3. Plaintiff's claim primarily sounds under two provisions of the Missouri Sunshine Law 610.020.2 and 610.020.4 RSMo. These provisions concern the notice required for meetings of public governmental bodies. Section 610.020.2 requires that public notice of meetings be given at least 24 hours in advance" unless good cause for such notice is impossible or impractical" and Section 610.020.4 requires that when it is necessary to hold a meeting on less than twenty-four-hour notice, or at a place that is not reasonably accessible to the public, the nature of the good cause justifying the departure from the twenty-four hours requirement should be included in the meeting minutes. Section 610.027 RSMo. allows any aggrieved person to seek judicial enforcement of the Missouri Sunshine Law and provides the remedies of civil monetary penalties, cost, and attorney fees for knowing or purposeful violation of that law. *Laut v City or Arnold* 491 S.W. 3d 191 While a violation of the Missouri Sunshine Law does not itself require knowledge that a violation is occurring, imposition of a penalty does, a penalty shall be imposed and attorney fees and cost may be assessed only upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental has knowingly violated sections 610.010-610.026. MO. Rev. Stat. section 610.027.3 The Court therefore must find that the defendant knew it was violating these provisions of the Sunshine Law for the statute to authorize a fine or penalty. *Id.* To purposely violate the open meetings law a member of a public governmental body must exhibit a "conscious design, intent, or plan to violate the law and to do so with awareness of the probable consequences. *Spredlin*, 982 S.W.2d at 262. Section 610.027 RSMo. expressly states that a knowing violation occurs when the public entity has knowingly violated sections 610.010 to 610.026, to prove a knowing violation a party is required to present proof that the public entity knew that its failure violated the Sunshine Law. *Strake v Robinwood West Cmty. Improvement Dist.* 473 S.W 3d 642, 645 (Mo. banc 2015). A purposeful violation is a far greater burden to prove than a mere knowing intent to engage in the conduct resulting in the violation, the Plaintiff must show that the conscious plan or scheme, or purpose of the conduct was to violate the law. *Laut Id.* 610.027.3 provides that upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated section 610.010 to 610.026 RSMo. the public governmental body or member shall be subject to a civil penalty in the amount of one thousand dollars, all cost and reasonable attorney fees incurred by any party successfully establish said violation. Section 610.027.4 provides that upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has purposely violated section 610.010 to 610.026

RSMo. , the public governmental body or member shall be subject to a civil penalty in the amount of five thousand dollars, all cost and reasonable attorney fees incurred by any party successfully establishing the violation. Section 610.027.5 provides upon a preponderance of the evidence that a public governmental body or a member has violated section 610.010 to 610.026 RSMo. a court shall void any action taken in violation of sections 610.010 to 610.026 RSMo., if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of section 610.010 to 610.026 RSMo. outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote.


4. The evidence clearly established that the Defendant is a governmental body and is subject to the provisions of the Sunshine Law. The Defendant further admitted that no statutory notice was provided for the August 15, 2022 and August 16, 2022 meetings. The meaning of the terms knowing and purposeful as set out in section 610.027 RSMo. are a question of statutory interpretation and as such is a question of law for the reviewing court since statutory interpretation is a question of law not fact. *Treasurer of State-Custodian of Second Injury Fund v Witte*, 414 S.W3rd 455, 460 (Mo. banc 2013). The scope of the application of section 610.010 to section 610.026 RSMo. "shall be liberally construed and their exceptions strictly construed to promote " the public policy of open records. Section 610.011 RSMo. When the issue is whether a penalty and attorney fees should be imposed, the portion of the Sunshine Law that allows for imposition of a civil penalty and an award of attorney fees and cost are penal in nature and must be strictly construed. *Strake v Robinwood West Cmty. Improvement Dist.* 473 S.W.3d 642 at 645 (Mo. banc 2015). Section 610.027 RSMo. expressly states that a knowing violation occurs when the public entity "has knowingly violated section 610.010 to 610.026, section 610.027.3 RSMo To prove a knowing violation there must be a showing that the public entity knew that its' conduct violated the Sunshine Law. The standard to prove a purposeful violation under section 610.027 RSMo. is greater, the party must show that the defendant purposefully violated sections 610.010 to 610.026 which the Missouri Supreme Court has defined as action with a conscious design, intent, or plan to violate the law and do so with awareness of the probable consequences. *Spradlin v City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998). Applying this law to the facts of this case it is very clear that the Defendant through it's board chairman Ms. Fulk had a specific agenda at play in August 2022. The Court finds her testimony as to her basis for closing the meetings on August 15 and 16 2022 are less than creditable. She claimed that she and the board were facing an immediate financial collapse so immediate that she felt the Hospital only had days if not hours left before it closed. While this type of testimony sounds good in court there must be an objective basis for this position presented in the evidence, which is totally missing here. While Ms. Fulk may have had questions

about the hospital accounts her actions show a clear intent to remove political opposition for the August 15, 2022 meeting by her strategic choice of board members who were called for the August 15, 2022 meeting and more importantly those who were not called. Logic would dictate that in a financial crisis two persons who should be questioned are the board treasurer and the chief operating officer. However, these officers were omitted from notice of the meeting and it looks like any other board member who may have supported them were also omitted. The selection of the members to attend clearly demonstrates that the primary purpose of this meeting was not the alleged financial crisis but was to focus on how to remove certain officers from the organization. There was absolutely no evidence on why Ms. Fulk elected to have the meeting in the basement of her home, without an agenda and without a call to order in an area where she knew cars could be hidden. Clearly the by-laws of the Hospital set out where meetings shall be called and review of that document does not authorize meetings in Ms. Fulk's home. The only conclusion is that whatever Ms. Fulk may had been up to she did not want the full board involved and she did not want the public informed or present for the meeting and even though she did finally on August 16, 2022 provide short notice to the board members her conduct to keep the public in the dark continued. These are purposeful violations of the Sunshine law. Ms. Fulk's actions demonstrate a conscious design, intent or plan to violate the sunshine law with awareness of the probable consequences. Whatever her agenda was in August 2022 she knew she wanted to limit the persons informed of and who could participate in the meetings of August 15 and 16, 2022 and the only way to get what she wanted was by a gross violation of the Sunshine Law which is exactly what she did. The fact that nothing was taken from the Hospital by any of the Board members or by Dr. Tobler just turns the flood lights on this violation and illuminate it for what it is and for all to see.

WHEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that judgment is granted in favor of the Plaintiff against the Defendant. That pursuant to the terms of section 610.027.4.5 RSMo. the Court finds that the Defendant Scotland County Memorial Hospital District by a preponderance of the evidence has purposely violated sections 610.010 to 610.026 RSMo. by failing to provide timely notice of the meetings of August 15, 16, 2022 to all elected board members, by failing on August 15, 2022 to meet in the meeting place as established by the By-Laws of the Defendant which was accessible to the public and by failing to provide 24 hours notice to the public of these meetings, and for failing to establish an exception to the notice requirements as set out in section 610.021 That pursuant to section 610.027.4 the Court finds the Defendant shall be subject to a civil penalty of \$5,000.00 for these violations. The court has determined the amount of the penalty by taking into account the size of the Defendant's district, the seriousness of the offense and whether the public governmental body had violated sections 610.010 to 610.026 RSMo.

previously. That section 610.027.5 RSMo. requires upon a finding by a preponderance of the evidence that a public governmental body has violated any provisions of section 610.010 to 610.026 RSMo., a court shall void any action taken in violation of section 610.010 to 610.026 RSMo. if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of section 610.010 to 610.026 RSMo. out weights the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. In this case the court so finds and all votes, records, decisions made or actions taken in the meetings of August 15, 16, 2022 are void and held for naught While the Plaintiff in his pleadings has made a demand for attorney fees there was no evidence of any claim for attorney fees made at the trial held on September 23, 2024 . While in most cases the court could make a finding that this claim was waived, in this case 610.027.3 allows a court to order a public governmental body or member to pay to any party successfully establishing a violation of the Sunshine Law all cost and reasonable attorney fees incurred. Refusing to award attorney fees for the time spent in obtaining the judgment would thwart the purpose of the Sunshine Law. *Hernandez v State Board of Registration for Healing Arts*, 936 S.W.2d 894 (Mo.App. WD. 1997).Therefore, the Court grants the Plaintiff fifteen (15) days from the date of this judgment to file his motion seeking attorney fees and cost. The Court specifically retains jurisdiction to make a determination and assessment of the attorney fees and cost.

SO ORDERED: November 8, 2024



Judge Rick Roberts
Presiding Circuit Judge
First Judicial Circuit
Scotland Circuit Court