

SUPREME COURT OF ARKANSAS

Harris v. City of Fort Smith, 366 Ark. 277

234 S.W.3d 875 (2006) · No. No. 05-965 · Decided May 4, 2006

SUMMARY

The Arkansas Supreme Court affirmed the denial of attorneys’ fees to David Harris after he prevailed in an earlier appeal establishing that serial one-on-one contacts among Fort Smith city officials constituted an informal meeting subject to the Arkansas Freedom of Information Act. The court held that Harris substantially prevailed but that the defendants’ position was substantially justified under Ark. Code Ann. § 25-19-107(d). The court overruled contrary language from Depoyster v. Cole to the extent it applied an arbitrary-or-bad-faith standard inconsistent with the statute’s substantially-justified standard.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Gunter
JURISDICTION	Arkansas
DECIDED	May 4, 2006
DOCKET	No. 05-965
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Sebastian County Circuit Court's denial of David Harris's motion for attorneys' fees after he prevailed on a Freedom of Information Act claim and obtained injunctive relief.
STANDARD OF REVIEW	The denial and amount of attorneys' fees are reviewed for abuse of discretion; factual findings concerning the relevant fee-award factors are reviewed for clear error; and statutory-construction issues are reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	David Harris v. City of Fort Smith, Bill Harding, C. Ray Baker, Jr., Nan Bartlett, Alaric Parrish, Joe W. Davis, Gary W. Campbell, Ben H. Shipley, Ken Pevehouse

TOPICS

municipal law

statutory interpretation

remedies

appellate procedure

standard of review

PRACTICE AREAS

municipal law

administrative law

appellate practice

QUESTIONS PRESENTED

1. Whether Arkansas Code Annotated section 25-19-107(d) makes an award of attorneys' fees mandatory when a plaintiff substantially prevails in a FOIA action.
2. Whether the defendants' position was substantially justified, or whether other circumstances made an award of attorneys' fees unjust.
3. Whether the circuit court abused its discretion by denying Harris attorneys' fees.

HOLDINGS

1. Under Arkansas Code Annotated section 25-19-107(d), a substantially prevailing FOIA plaintiff is presumptively entitled to reasonable attorneys' fees and litigation expenses, subject to the statutory exceptions where the defendant's position was substantially justified or other circumstances make an award unjust. The statutory substantially-justified standard, rather than the arbitrary-or-bad-faith test previously stated in *Depoyster*, controls.
2. The defendants' position was substantially justified under section 25-19-107(d), even though Harris substantially prevailed on the underlying FOIA claim; therefore, the circuit court properly denied attorneys' fees.
3. The circuit court did not abuse its discretion in denying Harris's request for attorneys' fees.

KEY QUOTATIONS

“The plain language of the statute clearly controls over the bad-faith test quoted from a law review article in Depoyster. To the extent that Depoyster conflicts with any respect to our statute, we overrule it.” (at 879)

“Thus, we conclude that appellees' position was substantially justified under Ark.Code Ann. § 25-19-107.” (at 880)

FACTUAL BACKGROUND

City Administrator Bill Harding contacted individual members of the Fort Smith City Board of Directors by telephone or in person to obtain approval for submitting a confidential bid to purchase the Fort Biscuit property. The Supreme Court had previously held that these serial one-on-one contacts constituted an informal Board meeting subject to the Arkansas Freedom of Information Act. On remand, the circuit court awarded injunctive relief but denied Harris's request for approximately \$10,000 in attorneys' fees, finding that the defendants had acted in good faith and that their position was substantially justified.

PROCEDURAL HISTORY

The circuit court initially granted summary judgment for the defendants, concluding that one-on-one discussions between the city administrator and individual Board members were not subject to the Arkansas Freedom of Information Act. The Arkansas Court of Appeals reversed, and the Supreme Court of Arkansas affirmed that reversal in *Harris II*, holding that the serial contacts constituted an informal Board meeting subject to the FOIA and remanding the issues of injunctive relief and attorneys' fees. On remand, the circuit court granted an injunction but denied attorneys' fees; the Supreme Court of Arkansas affirmed that denial.

DISPOSITION

affirmed

CASES CITED

- *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004)
- *Harris v. City of Fort Smith*, 86 Ark. App. 20, 158 S.W.3d 733 (2004)
- *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990)
- *Davis v. Williamson*, 359 Ark. 33, 194 S.W.3d 197 (2004)
- *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006)
- *Depoyster v. Cole*, 298 Ark. 203, 766 S.W.2d 606 (1989)
- *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004)
- *Wright v. City of Little Rock*, 366 Ark. 96, 233 S.W.3d 644 (2006)
- *El Dorado v. El Dorado Broadcasting Co.*, 260 Ark. 821, 544 S.W.2d 206 (1976)
- *\$15,956 in U.S. Currency v. State*, 366 Ark. 70, 233 S.W.3d 598 (2006)
- *Johninson v. Stodola*, 316 Ark. 423, 872 S.W.2d 374 (1994)