

A07-1388
CASE NO. A07-1418

**STATE OF MINNESOTA
IN COURT OF APPEALS**

International Brotherhood of Electrical
Workers, Local No. 292,*Appellant,*

v.

City of St. Cloud,

Respondent,

and

Design Electric, Inc.

Respondent.

RESPONDENT CITY OF ST. CLOUD'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE LEGAL ISSUE

- I. Whether the District Court abused its discretion in denying Appellant International Brotherhood of Electrical Workers' ("IBEW") motion for \$35,042.10 in costs and attorney's fees.

The District Court held it appropriate and within its discretion to award IBEW \$500 in attorney fees.

Apposite Authority:

Wiegel v. City of St. Paul, 639 N.W.2d 378, 385 (Minn. 2002).
Star Tribune v. City of St. Paul, 660 N.W.2d 821 (Minn. App. 2003)

STATEMENT OF THE CASE

International Brotherhood of Electrical Workers (hereinafter “Appellant” or “IBEW”) brought a civil action against the City of St. Cloud (hereinafter “City”) for alleged violations of the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01, *et seq.* claiming that the City failed to disclose payroll records it had been maintaining on employees of Design Electric, Inc. (hereinafter “Design”) for prevailing wage purposes. Design was under contract with the City to complete utility improvements to a downtown St. Cloud project. IBEW, a union purportedly interested in Design’s employees, made a data request to the City for Design’s certified payroll records asserting that these documents constituted public data under the MGDPA and therefore the City was required to release them. The City did not release the documents based on Design’s representations that the payroll documents included confidential trade secret information and thus were private data pursuant to Minn. Stat. §13.37, subd. 1(b). IBEW sued the City.

On April 9, 2007, IBEW moved for summary judgment and Design moved to intervene. Design’s request to intervene was granted on April 23, 2007. On May 21, 2007 the Honorable Thomas Knapp granted IBEW’s motion for summary judgment finding the payroll documents constituted public data. The District Court ordered the City to provide IBEW with copies of Design’s certified payroll records, redacting only social security numbers and child support information. In addition, the District Court also addressed IBEW’s request for attorneys fees and held “it is

appropriate in this Court's discretion that [IBEW] be awarded \$500 in attorney fees, payable from the City." (Appellant's Appendix; A-18).

Design made a motion to stay enforcement of the District Court's summary judgment order. The Court held a telephone conference on May 31, 2007 and on June 1, 2007 stayed its May 21, 2007 order. IBEW then brought a motion under Minn. Stat. § 13.08, subd. 4, for an additional award of costs and attorney fees in the amount \$35,042.10 against both the City and Design. On July 18, 2007, the District Court denied IBEW's motion and upheld its previous award of \$500 against the City. IBEW filed this appeal. In a separate appeal, Design appealed the District Court's order granting IBEW summary judgment. The two appeals have been consolidated for purposes of argument and decision.

STATEMENT OF THE FACTS

In 2006, the City of St. Cloud ("City") contracted with Design Electric, Inc. ("Design"), a commercial electrical contractor, for certain work on a downtown public utility improvement project known as the "East St. Germane Utility Project" (hereinafter "Project"). Pursuant to requirements under Minnesota's Prevailing Wage Act, Minn. Stat. §177.41, Design provided the City with certified payroll records on employees involved in the Project. Design stamped "Confidential Trade Secret Information" on the payroll documents it produced to the City. The City was aware of Design's belief that

this payroll data contained confidential trade secrets based on previous litigation in which Design sued the City.¹

IBEW sent the City written requests under the MGDPA for Design's certified payroll records as related to the Project. Because of Design's representations that the data constituted confidential trade secret information under the MGDPA, the City did not release the requested records to IBEW. Under the MGDPA, trade secret information is classified as "nonpublic data." See Minn. Stat. §13.37, subd. 1(b).

In addition, Design threatened to sue the City, as it did in 2001, if it released the certified payroll records. The City was sued anyway because, in February, 2007, IBEW brought a lawsuit claiming the City had violated the MGDPA by not releasing Design's payroll records.

At the summary judgment hearing on April 20, 2007, Design's counsel *for the first time*, rejected the previous argument that the payroll records were protected trade secrets

¹ In 2001, IBEW made a MGDPA request to the City for certified payroll records on Design employees working on a city project. Determining the data, excluding social security numbers, were classified as public personnel data under the MGDPA, the City released the records to IBEW. Design challenged the City's disclosure of the data arguing that the payroll records constituted private "trade secret information" pursuant to Minn. Stat. § 13.37, subd. 1(b) and that disclosure violated the MGDPA and Design's common law right to privacy. Design sued the City and IBEW intervened. The Honorable Richard Ahles of the Stearns County District Court granted the City's and IBEW's motions for summary judgment. The District Court found the documents were public and were not "trade secrets" under Minn. Stat. § 13.37, subd. 1(b). Moreover, the District Court found the issue was moot because the City had already released the documents to IBEW. Design appealed and this Court issued a decision affirming the trial court on the issue of mootness but did not address the merits of Design's trade secret argument. *Design Elec v. City of St. Cloud*, No. C1-01-734, 2001 WL 1402763 (Minn. App. Nov. 13, 2001).

and instead argued that the information was not accessible to IBEW under Minn. Stat. §13.43, subd 6 because that provision limited a union's access to personnel data. The City did not "acquiesce" to this argument but instead acknowledged that payroll information (excluding social security numbers, child support information and home addresses), generally fit into the category of public personnel data under Minn. Stat. §13.43, subd. 2. The City did suggest the court review the disputed data in camera and/or provide clarification as to what was public and not public. (Transcript of May 7, 2007 hearing, pp. 31-22). Since Design and IBEW were threatening to continue litigation should the City release or withhold the data, the City hoped the District Court could provide guidance and finality as to the City's legal obligations under the MGDPA with respect to this dispute. The District Court did not deem an in camera review necessary, however, indicating an understanding of the kinds of information contained in the payroll records. *Id.* at pp. 38-40. The City did not release the payroll records pending the District Court's decision.

Upon receiving the District Court's summary judgment order, the City made preparations to comply and release the payroll data the court deemed public. However, Design moved for and was granted a stay of enforcement of the court order. (A-173). The District Court specifically ordered the City to *not* disclose the data pending an outcome on Design's appeal. (Respondent City of St. Cloud Appendix- RA-1).

STANDARD OF REVIEW

An award of attorney fees is reviewed for an abuse of discretion. *Becker v. Alloy Hardfacing & Engineering Co.*, 401 N.W.2d 655, 661 (Minn. 1987). This is a high

standard and attorney's fees will rarely be overturned on appeal. *Burns v. Burns*, 466 N.W.2d 421, 466 (Minn. App. 1991). An abuse of discretion is found when the District Court resolves a manner that is against logic and the facts on the record. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). The Appellate Court will uphold findings of fact "unless they are clearly erroneous." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001). A finding is clearly erroneous "when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), citing *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

LEGAL ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR ADDITIONAL ATTORNEYS FEES.

A. An Award of Attorneys Fees Is Discretionary And There Was No Abuse of Discretion

The Minnesota Government Data Practices Act ("MGDPA") authorizes a court, based on its discretion, to grant a prevailing party in a data practices lawsuit reasonable attorney's fees and costs. The relevant statute provides:

[A]ny aggrieved person seeking to enforce the person's rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney fees, as determined by the court.

Minn. Stat. § 13.08, subd. 4 (2006). An award of attorney's fees is not statutorily mandated but is within the discretion of the trial court. *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 385 (Minn. 2002). On appeal, absent a clear abuse of discretion, the court

will not disrupt the trial court's award or denial of attorney's fees. *Burns v. Burns*, 466 N.W.2d 421, 424 (Minn. App. 1991). Moreover, "[a] determination regarding attorney's fees will rarely be overturned on appeal." *Id.*

In the present case, the District Court reviewed IBEW's request for attorney's fees twice and thoughtfully considered the factual background of the case and the parties' positions. There is no evidence of an abuse of discretion. The District Court first reviewed this issue on Plaintiff's motion for summary judgment. In its May 21, 2007 decision, the District Court awarded IBEW attorney's fees of \$500.² After IBEW, unsatisfied with the attorney fee award, moved for an additional \$35,000 plus in fees against both the City and Design,³ the District Court again reviewed the facts and law of the case and exercised its discretion in affirming the original fee award. In fact, the District Court issued a nine page order and memorandum affirming its earlier \$500 attorney's fees award. (A-1-9).

² Although Appellant argues that the District Court awarded Appellant's attorney's fees *sua sponte*, this claim is without merit. As the District Court correctly points out in its July 18, 2007 Order, the Plaintiff's "Memorandum of Law in Support of Its Motion for Summary Judgment Under the Minnesota Government Data Practices Act" listed attorneys fees pursuant to Minn. Stat. § 13.08, subd. 1, as part of its "relief requested." Therefore, any relief granted to Appellant was not *sue sponte* but was granted pursuant to the Appellant's own request.

³ The City is seeking affirmance of the District Court's July 18, 2007 order. However, the issue of Design's liability for attorney fees under the MGDPA is a question of law separate from a review of the Court's discretionary decisionmaking on the appropriate fee award. Although the statutory language does not specifically provide for attorney fee awards against non-government entities, principles of equity should apply and, under the specific circumstances of this case, provide a basis for attaching liability to the Intervenor. The City thus joins IBEW's argument in support of Design's liability for the attorney fee award.

IBEW claims that the District Court improperly exercised its discretion by not explaining the basis for its decision. However, as both the May 21, 2007 and July 18, 2007 orders clearly state, the District Court reviewed the facts and law and then issued findings supporting its decision including specifically recognizing the fact that Design and IBEW's fight over the data put the City in a difficult position. The District Court specifically found that, "Design's trade secret assertion, particularly taking into account the previous litigation put the City in a difficult position" and, "[the] trade secret claim made it reasonable for the City to initially refuse to provide the information sought by [IBEW]." (A- 6-7).

In reviewing the circumstances of this case, the District Court specifically determined that the City was not responsible for all of Plaintiff's requested fees. The District Court acted within its discretion in denying IBEW's request for full reimbursement of fees and instead deemed a fee award of \$500 reasonable on the basis that after Design dropped the trade secret argument, the City should have acted to disclose the payroll records as they contained public personnel data. Because the District Court clearly articulated the basis for its decision not once but twice, IBEW's argument that no findings were issued is completely unfounded.

In addition, the District Court did not abuse its discretion in awarding IBEW \$500 in attorney's fees. The Court articulated its reasoning for awarding IBEW \$500 after twice reviewing IBEW's request for costs and fees. Accordingly, IBEW has failed to demonstrate that the District Court clearly abused its discretion and therefore this Court should affirm the District Court's order.

B. The City's Actions Were Reasonable

Minnesota appellate courts have consistently held that whether or not the party prevailed in their data practices suit is not dispositive of whether attorney's fees and costs should be awarded. When a government entity has made a reasonable defense on the merits and made colorable arguments supporting its actions, Minnesota appellate courts have refused to award attorney's fees to prevailing parties. *See Star Tribune v. City of St. Paul*, 660 N.W.2d 821 (Minn. App. 2003); *WDSI, Inc. v. County of Steele*, 672 N.W.2d 617 (Minn. App. 2003).

In *Star Tribune*, the Minnesota Supreme Court denied the Star Tribune's request for attorney's fees because even though the University of Minnesota had violated the MGDPA, the University had presented a reasonable basis for failing to disclose information regarding the University's Presidential selection process. 660 N.W.2d at *1. The Court recognized that "[b]y making such awards discretionary rather than mandatory, it is clear that the legislature envisioned some class of cases in which a defendant who lost an enforcement action, would nevertheless *not* be liable for the plaintiff's attorney fees."⁴ *Id.* (emphasis added).

The present case is an example of the "class of cases" in which a governmental entity acted reasonably in failing to disclose the requested information and therefore

⁴ Appellant's suggestion that the "reasonableness" of the University's position was not an integral part of the court's decision is unfounded and unsupported. Nowhere in its opinion did the court distinguish some factors as being more important than others. Moreover, although the court mentions that the Star Tribune was seeking \$300,000 in fees and costs, Appellant's assumption that this "gargantuan figure" played a role in the court's decision is meritless and pure speculation.

should not be held liable for the prevailing party's attorney's fees. Design originally argued that the data requested by IBEW contained trade secrets and therefore was not public data under the MGDPA. Trade Secret Information is defined as

government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Minn. Stat. §13.37, subd. 1(b).

Indeed, Design, as the affected organization, clearly met the first two criteria of the statutory definition. Design supplied the data to the City and, by stamping the documents as confidential and providing specific representations to the City as to their trade secret status, Design made reasonable efforts to maintain the data's secrecy. Finally, Design, not the City, was in a position to determine the economic value tied to the continued confidentiality of such data. Given all of these factors, as well as the unresolved issue from the previous litigation, the City acted reasonably in denying IBEW's initial data requests and the District Court agreed.

However, once Design abandoned their trade secret claim and argued that the data was "personnel" data, the District Court stated that the City should have released the payroll records. The circumstances as reflected in the record show, however, that the City continued to act reasonably in waiting for the District Court to issue an order on the proper classification of this data before releasing Design's payroll records to IBEW. A

mere four weeks had passed from the hearing in which Design dropped its trade secret argument and the District Court's order on IBEW's summary judgment motion. Upon receiving the summary judgment decision, the City immediately made plans to release the payroll information the court deemed public; only ceasing its efforts upon receiving the District Court's subsequent order staying enforcement of the summary judgment decision and ordering the City to withhold the data pending Design's appeal.

While the District Court found that the City should have disclosed the payroll data after the summary judgment hearing, the record reflects that the four week delay was reasonable under the circumstances. While the data were no longer declared protected as trade secret information, all parties agreed that the information was properly classified as personnel data under the MGDPA. The dispute was whether it was public or private personnel data. Whereas the general presumption under the MGDPA is that government data are public unless otherwise provided for in the statute, "personnel" data are classified as presumptively private unless explicitly provided for differently in the statute. Therefore, because of this burden shift, the City acted reasonably in cautiously evaluating the proper designation of the payroll data based on Design's shift in positions and IBEW's assertions that all data, including home addresses of employees, were public. Indeed, the City objected to IBEW's claims that home addresses were public personnel data and specifically asked the District Court to acknowledge that the home addresses on the payroll records were properly withheld. (Transcript, pp. 34-35).

The City acted within its right to proceed prudently and cautiously when considering its obligations under the MGDPA for releasing personnel data. This is

particularly true in light of the past litigation the City has faced involving IBEW and Design. In the previous litigation, the Court of Appeals found Design's case moot because the City had already released the data to IBEW. Here, the City reasonably decided to allow the present litigation to proceed and the Court to consider the issues that were already before it so as to have some finality on a potentially on-going dispute. Any other action on behalf of the City would likely invite further litigation and would not serve the purposes of judicial efficiency and economy. The District Court agreed. It, in essence, found that the City was in between a rock and a hard place, and acted reasonably under the circumstances; thus the discretionary award of a nominal amount in attorney's fees.

IBEW suggests that it is entitled to additional attorneys fees because the District Court found that Design's reliance on § 13.43, subd. 6, ("labor organization" provision) was "absurd" and "unreasonable."⁵ While the District Court did find that Design's argument would produce an absurd result, the court further stated, "See, Minn. Stat. § 645.17, subd. 1 (courts may be guided by the presumption that the legislature did not intend a result that is absurd, impossible of execution, or unreasonable)." IBEW's argument takes the District Court's statement out of context. The District Court did not suggest that Design acted unreasonably in making an argument based on Minn. Stat. § 13.43, subd. 6 but rather that the argument must fail because the legislature would not

⁵ IBEW is in error in attributing the Minn. Stat. §13.43, subd. 6 argument to both Design and the City. The City has never taken the position this statutory provision is applicable to the issues to be resolved in this case.

have enacted a law that would produce an absurd result. Thus, IBEW is in error in stating that the District Court labeled as absurd the positions of Respondent.

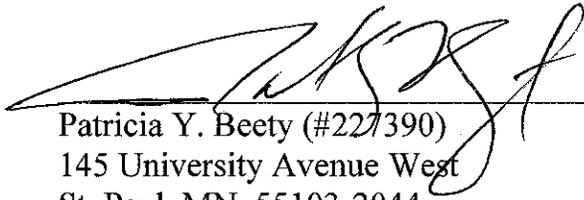
CONCLUSION

For the above reasons, the District Court's July 18, 2007 order should be affirmed.

Respectfully submitted,

LEAGUE OF MINNESOTA CITIES

Date: September 21, 2007



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