

DISTRICT COURT, LAS ANIMAS COUNTY, COLORADO	
Court Address: 200 East 1st Street, Room 304, Trinidad, CO, 81082	
Plaintiff(s) STEPHEN HAMER v. Defendant(s) DOMINIC VERQUER	DATE FILED: August 14, 2019 10:01 AM CASE NUMBER: 2019CV30024
△ COURT USE ONLY △	
Case Number: 2019CV30024 Division: D Courtroom:	
Order Granting Plaintiff's Motion for Award of Attorney Fees	

The Court, having reviewed Plaintiff's Motion and applicable law, and noting Defendants' failure to respond, finds as follows:

On April 17, 2019, Plaintiff filed his Complaint and Application for an Order to Show Cause, and the Court issued a show cause order.

District Attorney, Henry Solano filed an objection to disclosure of the requested autopsy report, and the Court granted his request to stay the show cause hearing pending Judge Gerbracht's ruling on his Motion for Non-Disclosure of Autopsy Report in the underlying criminal case, 19CR38.

On June 15, 2019, Judge Gerbracht denied his Motion for Non-Disclosure, and Mr. Solano subsequently provided the autopsy to Plaintiff.

Mr. Solano has moved this court, on behalf of Defendant, to dismiss the case at bar based on mootness. Plaintiff objects as the issue of attorney fees has not been resolved, and Plaintiff filed a separate motion for the same citing 24-72-204(5), C.R.S. which states:

Unless the Court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court.

Because Mr. Solano's Motion for Non-Disclosure was denied in the criminal case, and the report was then disclosed to Plaintiff in this case, this Court never made a determination as to the propriety of the initial denial to inspect the report in this case as required by the statute. It can be argued that Judge Gerbracht made that determination by way of denying Mr. Solano's motion, but this Court has not because no show-cause hearing was held.

However, because the circumstances that led to this situation were created when this Court granted Mr. Solano's Motion to stay, it would be unfair to deny Plaintiff his statutory right to attorney fees if this court would have made such a finding if the show cause hearing was held.

C.R.S. 24-72-204(3)(a)(l) excludes autopsy reports from the listed records that a custodian shall deny inspection of. In interpreting that statutory provision, *Denver Publishing Co. v. Dreyfus*, 520 P.2d 104 (Colo. 1974), held that autopsy reports are not within the investigatory files exception of Open Records Act and disclosure or inspection thereof can only be refused only by application for court order permitting refusal of disclosure on the ground of substantial injury to public interest. This ruling was upheld in *Freedom Newspapers, Inc. v. Bowerman*, 739 P.2d 881 (Colo. App. 1987) under facts similar to those in the case at bar.

Based on the aforementioned authority, and on the findings contained in Judge Gerbracht's June 15th order in case 19CR38, this Court finds that Defendant's denial of inspection of the autopsy report was improper. The Court cannot find that release would cause "substantial injury to the public interest." As such, the Court is required by 24-72-204(5), C.R.S. to award attorney fees.

Wherefore, the Court GRANTS Plaintiff's Motion and ORDERS Defendant to pay Plaintiff's reasonable attorney fees and costs in an amount to be determined by the Court. Plaintiff has 21 days to submit supporting documentation.

Issue Date: 8/14/2019

A handwritten signature in black ink, appearing to read 'J. Clay McKisson', written in a cursive style.

J. CLAY MCKISSON
District Court Judge