

IN THE SUPREME COURT OF GUAM

GUAM RADIO SERVICES, INC.
d/b/a **KOKU-FM HIT RADIO 100,**
Plaintiff-Appellant

vs.

GUAM ECONOMIC DEVELOPMENT AUTHORITY
Defendant-Appellee

OPINION

Filed: August 1, 2000

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Supreme Court Case No. CVA99-039
Superior Court Case No. CV2003-98

Appeal from the Superior Court of Guam
Argued and submitted on March 7, 2000
Hagåtña, Guam

Appearing for the Plaintiff-Appellant:

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BEFORE:BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, Associate Justice; ALBERTO C. LAMORENA III, Designated Justice

SIGUENZA, J.:

[1] TheThe following case discusses The following case discusses the grantiThe following case discusses the 55 5 GCA §5 GCA § 10101 *et seq.*, (1993). The appellant argues that the lower court incorrectly applied the four-factorfour-factor analysis used in determining attorney s fees.four-factor analysis used in determining attorney thethe trial court had discretion to refuse an award and that therethe trial court had discretion to refuse an award and uponupon the followinganalysis, we affirm the lower court supon the following analysis, we affirm the lower court occurred.

PROCEDURAL AND FACTUAL BACKGROUND

[2] OnOn June 23,On June 23, and August 18, 1998, GuamOn June 23, and August 18, 1998, Guam Radio S 100100 (hereinafter KOKU) twice requested that the Guam Economic Devel100 (hereinafter KOKU) (hereinafter(hereinafter GEDA)(hereinafter GEDA) provide it with information regarding delinquent(hereina thethe present, including the names of thosethe present, including the names of those individualsthe present, inclu ofof time in which the nof time in which the named partiesof time in which the named parties were in de Consequently,Consequently, on August 24, 1998,Consequently, on August 24, 1998, KOKU filed a complaint with GEDAGEDA produce the relevant materialsGEDA produce the relevant materials under the rules ofGEDA prod fafavorfavor favor offavor of favor of Kfavor of KOKU. *Guam Radio Services, Inc. v. Guam Economic Developmen* (Super.(Super. Ct. Guam Dec.(Super. Ct. Guam Dec. 9, 1998). On January 12, 2000, a majority of(Super. Ct. Gu court scourt s holding that GEDA must deliver documentcourt s holding that GEDA must deliver document *Services, Inc. v. Guam Economic Development Authority*, 2000 Guam2000 Guam 1, ¶ 25. 2000 Guam 1, ¶ 25. C

dissented. *Id.* at ¶¶ 26-35.

[3] Before this court heard the case on its primary Before this court Court seeking attorney s fe Court seeking attorney s fees for their original case. First, the substantially prevailed in its suit, a threshold requirement for consideration in grants substantially pre fees. *Guam Radio Service Guam Radio Services, Inc. Guam Radio Services, Inc. v. Guam Economic Develo Ct. Guam Sept. 8, 1999*). Next, the trial court Ct. Guam Sept. 8, 1999). Next, the trial court stated that it must o whether KOKU deserved attorney s fees: 1) whether KOKU deserved attorney s fees: 1) benefit to the documents; 2) commercial benefit to the documents; 2) commercial benefit to the complainant; 3) the n the records sought; and 4) whether the government s withholding of the records had a reasonable basis in law. *Id.* (citing *Guam Contractors Ass n v. U.S. Dep t of Labor*, 570 F.Supp. 163, 167 (N.D. Cal. 1983)). Regarding the first factor, the trial court ruled that the public received a benefit from having the documents released and ensuring having the documents released and ensuring a commercial benefit from the receipt of the documents, a commercial benefit from the receipt of the documents, of an award when it of an award when its motives lacked of an award when its motives lacked altruism. The interest in the materials, interest in the materials, thus failing the third prong. interest in the materials, thus f a reasonable basis for withholding the a reasonable basis for withholding the documents. a reasonable basis for wit the four factors, the trial court denied the radio station any attorney s fees. *Id.*

[4] KOKU KOKU appealed these findings in a KOKU appealed these findings in a timely manner in accordance

DISCUSSION

[5] This court has jurisdiction according to Title 7 This court has jurisdiction according to Title 7 GCA §TH this court should review this court should review the trial court s decision for an abuse of discretion. Se

v.v. Anderson v. Anderson, 2000 Guam 8, ¶ 5; *Midsea Indus., Inc., v. HK Eng g, Ltd.*, 1998 Guam 14, 1998 (evaluating a trial court's motion to set aside a default judgment).¹

[6] This court has consistently defined an abuse of discretion as a trial court's judgment, *toto* into an end not justified by the evidence, a judgment that is based on facts as are found. *People v. Quinata*, 1999 Guam 6, ¶ 17; *People v. Tuncap*, 1998 Guam 12, 12 (quoting *Int'l Jensen, Inc., v. Metrosound U.S.A., Inc.*, 44 F.3d 819, 822 (9th Cir. 1993)). A lower court abuses its discretion when it fails to apply the correct law or if it rests its decision on an erroneous finding of material fact. *Tuncap*, 1998 Guam 12. Under the abuse of discretion standard, we cannot reverse a decision unless it has a defect that is below committed a clear error of judgment in the conclusion it reached upon a weighing of relevant facts. *Quinata*, 1999 Guam 6 at ¶ 17; *Tuncap*, 1998 Guam 13 at 1998 Guam 13. The abuse of discretion standard is meant to insulate a trial court's decision from being reversed by an appellate court. 1 STEVEN ALAN CHILDRESS & MARTHA S. DAVIS, STANDARDS OF REVIEW § 4.21 (3rd ed. 1999). The abuse of discretion standard is the underpinning to our decision in this case.

[7] The relevant law in this dispute, Title 5, Section 1101, provides that an attorney's fees shall be assessed against the government of Guam reasonable attorney's fees incurred in any case under this Section in which the complainant has incurred in any case under this Section. Because the attorney's fees provision in the federal Free Trade Area of the Caribbean Act is not applicable to this case, the relevant law is Title 5, Section 1101.

¹Neither *Parkland Development* nor *Midsea* involved attorney's fees. However, the cases on attorney's fees that this court has written were reviewed *de novo* as they addressed sanctions pursuant to Guam R. Civ. P. 11. See *Seafood Grotto v. Leonardi*, 1999 Guam 30, ¶ 6; *Taijeron v. Kim*, 1999 Guam 16, ¶ 6; *People v. Manibusan*, 1999 Guam 22, ¶ 6; *Sumitomo Constr. Co., Ltd., v. Zhong Ye., Inc.*, 1997 Guam 8, ¶ 9.

FOIA), FOIA), found at 5 U.S.C. § 552(a)(4)(E) (1996), is nearly identical to FOIA), found at 5 U.S.C. § 552(a)(4)(E) (1996), which provides guidance to the court.² Legislators included a provision in order to encourage plaintiffs to file claims for attorney's fees for them to pursue. *Guam Contractors*, 570 F.Supp. at 169. Nevertheless, the legislators wanted courts to be thoughtful and cautious in granting attorney's fees. *See Vermont Low Income Advocacy Council, Council, Inc. v. Usery*, 546 F.2d 509, 513 (2nd Cir. 1976) [hereinafter *VLIAC*]. These four factors in determining that it would not award KOKU attorney's fees.

[8] In this appeal, KOKU asserts that the news media has no special ability to obtain information from governmental agencies and that relevant case law is under the list of plaintiffs not considered to be seeking a commercial benefit. Thus it argues that the trial court grossly erred in its analysis of the second and third factors, respectively. It claims that GEDA was obdurate and acted in bad faith, thus lacking in withholding documents. GEDA, however, states that judges have broad discretion in awarding these fees and argues that no clear violation has occurred that would warrant an award of attorney's fees.

[9] Traditionally, a court did not have the power to award attorney's fees unless lawmakers specifically provided them without exception. *Wilderness Soc y*, 421 U.S. 240, 247, 95 S. Ct. 1612, 1616 (1975). In some types of litigation those involving antitrust or civil rights matters for example, granting attorney's fees is appropriate.

² 5 U.S.C. § 552(a)(4)(E) states: The court may assess other litigation costs reasonably incurred in any case under this section in which the complainant has prevailed.

mandatory award for successful plaintiffs. *Id.* at 260-62, 95 S. Ct. at 11
Sunshine Act and the FOIA, the laws declare that a judge *may* award attorneys' fees
thus indicating that such an award was intended to be permissive.
11 GCA § 715(9), 1 GCA § 715(9), (1995). In both civil rights and FOIA cases, legislators intended to compensate
plaintiffs who ended up forfeiting valuable time and monetary resources.
agencies to adhere to the law. However, unlike in cases involving
purposely chose not to require a mandatory attorney's fees award under
Alderete, 630 F.2d 428, 431 (5th Cir. 1980); *Blue v. Bureau of Prisons*, 570 F.2d 529, 533 (5th Cir.
1978). In each of the legislators' multiple drafts of the FOIA's section on attorney's fees (1978). In each of the legislators'
noted that judges have discretion on the matter and warned that grants of attorney's fees
should never be an automatic gesture. *See VLIAC*, 546 F.2d at 512-13. *VLIAC*, 546 F.2d at 512-13. Such
FOIA attorney's fees cases clearly emphasize that such grants are discretionary.
Journeyman and Apprentices of the Plumbing and Pipefitting Industry v. International Union of
Local 598, 841 F.2d 1459, 1461 (9th Cir. 1988) [hereinafter *Local 598*]; *Church of Scientology v.*
U.S. Postal Serv., 700 F.2d 486, 489 (9th Cir. 1983); *GGinter v. IRS*, 648 F.2d 469, 471 (8th Cir.
1981); *Lovell*, 630 F.2d at 434; *Nationwide Bldg. Maintenance, Inc., v. Sam*
0606 (D.C. Cir. 1977); *VLIAC*, 546 F.2d at 513. KOKU contends that the trial court's discretion is
absolute. Nevertheless, we maintain that a trial court's discretion under
the Sunshine Act is quite broad and substantial.

[10] Deciding whether a trial court abused its discretion under FOIA depends upon determining whether an analysis. In the early stages of the fee provision s draft from a requirement into a recommendation because the Senate too delimiting. *VLIAC*, 546 F.2d at 513. The flexibility of the guidelines does a judge can avoid the four-factor analysis. Instead, lawmakers made th to permit judges to consider additional matters specific to individual *Scientology*, 700 F.2d at 492; *Exner v. Federal Bureau of Investigation* (S.D. Cal. 1978), *judgment aff d*, 612 F.2d 1202 (9th Cir. 1980). Since the time enactment, more courts have stated that the judges must conduct before awarding fees. *See Local 598*, 841 F.2d at 1461; *Lovell*, 630 F.2d at 433.

[11] Courts have disagreed about whether the must meet each of the four factors. *Compare Ginter*, 648 F.2d at 470 (promoting balancing), *Lovell*, 630 F.2d at 433 (promote balancing), *with Republic of New Aff* 120120 (D.D.C. 1986) (opining that a court should not regard 1570570 F.2d at 534 (holding that it was a 570 F.2d at 534 (holding that it w entirely [in not granting the fees].); *but see Cotton v. Heyman*, 63 F.3d 1115, 1120-21 (D.C. 1995) (holding both that too much weight 1995) (holding both that too m errederred in not discussing the reasonable basis prong at all). Nonetheless, complete failure the the four-factor analysis or to consider any single factor thereof have cons in which appellate courts have reversed a lower court s decision

Found., Found., Inc., v. U.S. Dep't of Agric., 11 F.3d 211, 216 (D.C. Cir. 1993) (reconsider the fourth factor); *Local 598*, 841 F.2d at 1464 (reversed for failure to consider the fourth factor); *Church of Scientology*, 700 F.2d at 495 (reversed for failure to consider the third factor); *Blue*, 570 F.2d at 534 (reversed for failure to include the four factors in its decision); *See, e.g., Church of Scientology*, 700 F.2d at 494; *Nationwide Bldg.*, 559 F.2d at 1000 (reversed a decision merely because it disagreed with part of the decision in obedience to the principles of the abuse of discretion). Even when a reversal is granted, it does not avoid telling the lower courts what they should decide after discussing the four factors.

[12] In the trial court's perception, KOKU is not the resource-deprived plaintiff imagined when they decided to compensate plaintiff imagined when they decided to compete for FOIA/Sunshine Act suits due to their great costliness. In essence, KOKU was not substantially burdened by having to pay attorney's fees and that the expense of this litigation would not prevent KOKU from seeking such information in the future. *See Guam Radio Services*, CV2003-98 (Super. Ct. Guam) (CV2003-98 (Super. Ct. Guam) its duty by mentioning all of the four factors and explaining if it thought KOKU one. Even if we would have come to a different conclusion on some of the factors, we cannot say the trial court abused its discretion by deciding differently.³

³ In fact, we firmly disagree with the trial court's ruling in *Guam Radio Servs., Inc.*, CV2003-98 (Super. Ct. Guam Sept. 8, 1999) regarding the attorney's fees provision. Factors two and three of the four-pronged analysis in *Guam Radio Servs., Inc.* at 1462; *Church of Scientology*, 700 F.2d at 494; *see also Lovell*, 630 F.2d at 432-33. In the trial court's opinion, lawmakers did not have a news service like KOKU bringing claims under the Sunshine Act. The trial court also seeks the information for commercial gain. . . . It also seeks the information for commercial gain. *Guam Radio Servs., Inc.*, CV2003-98 (Super. Ct. Guam Sept. 8, 1999).

[13] Based upon the aforementioned discussion, we see no reason to Base abused its discretion in determining attorney s fees under the Sunshine A abused its discretion in determining court s decision was completely wrong or obviously lacking as the abuse of discretion demands. Nothing occurred in this case that was more egregious than i which also usually uphold the trial court s findings. The trial severely faulty terrain where we would reverse under this high standard.

CONCLUSION

[14] We find that the trial court did not abuse its discretion in making its finding trial court s decision is **AFFIRMED**. The appellant shall receive no attorney fees despite having substantially prevailed in the outcome.

PETER C. SIGUENZA
Associate Justice

BENJAMIN J.F. CRUZ
Chief Justice

stated: Inquiry into the nature of interest should lead the court to consider whether private, purely commercial interest as opposed to a scholarly, *journalistic*, or public interest. , or p 14621462 (emphasis added) (citation omitted). We believe a news radio program would fit under the journalistic exception. In *Nationwide Bldg.*, *Nationwide Bldg.*, the court specifically noted that when the Senate waste the court specifically noted that when the Senate interests should not be considered commercial interests. *Nationwide Bldg.*, 559 F.2d at 712.

journalistic, or public interest. *United Ass'n of Journeymen and Apprentices v. Pipefitting Indus., Local 598 v. Dep't of Army Corps* (emphasis added) (citation omitted). A judge should (emphasis added) (citation omitted). A judge should not act within the ambit of journalistic endeavor for a commercial purpose.

[18] Legislators included the aforementioned factors in the fees provision because they wanted judges to exclude those cases in which parties provide information without employing the Sunshin. Neither GEDA nor the trial court have pointed to anything to suggest that KOKU would derive some significant, financial gain from presenting this information. They do not explain how this news is more beneficial than any other newsworthy event. They do not show how coverage on this issue would place KOKU in a position to outpace news-reporting peers or rivals. The trial court claimed that KOKU would make agencies react, yet the facts in the case show that KOKU has no such exceptional influence. These important factors were not considered when the trial court conducted its analysis of the four factors.

[19] While the majority chooses to mention this passively in a footnote, it should be emphasized in this opinion. Regardless of whether the four-factor test is applied in a strict or demands that all four factors be met, a trial court that misapplies two of the factors has not conducted the analysis in a thorough and satisfactory manner. Under the majority's decision, the appellate court would never reverse any trial court's analysis which merely mentions the factors. Through our review of this case, we should inform the parties and lower courts of the correct application of the factors.

fees provision requires a stricter analysis than that which the lower court conducted. To make this conclusion, this court risks suggesting to the lower court discretion with this section of the Sunshine Act. Therefore, I cannot join an unconditional affirmation of the trial court's decision.

[20] In following several FOIA precedents, I believe that this court should order a reconsideration of the trial court's decision. The court should order a reconsideration of the trial court's decision. The court should order a reconsideration of the trial court's decision. A news source would satisfy the second and third factors. So long as the trial court follows our instructions on those two factors, it still has discretion on whether to grant KII would approve of any decision under the condition that the trial court apply *properly*.

[21] I, therefore, both **CONCUR IN PART** and **DISSENT IN PART** with the majority.

ALBERTO C. LAMORENA, III
Designated Justice