No. 125,223

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF ATCHISON,
Appellee,

v.

JACK LAURIE, in His Official Capacity as Sheriff of Atchison County,
Appellant.

SYLLABUS BY THE COURT

1.

A writ of mandamus seeks to enjoin an individual or to enforce the personal obligation of the individual to whom it is addressed and is appropriate where the respondent is not performing or has neglected or refused to perform an act or duty, the performance of which the petitioner is owed as a clear right.

2.

The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody by the authority of the United States or by the authority of any city located in such county and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law. K.S.A. 19-1930(a).

3.

There are four factors to consider in determining whether the use of "shall" is mandatory or directory: (1) legislative context and history; (2) the substantive effect on a party's rights versus merely form or procedural effect; (3) the existence or nonexistence of consequences for noncompliance; and (4) the subject matter of the statutory provision.

4.

K.S.A. 19-1930(a) requires a county sheriff to accept detainees without exceptions. This court cannot rewrite the provision to include an exception where the sheriff of a county believes a detainee requires medical attention prior to being booked into the jail. It is solely within the bailiwick of the Legislature to amend the statute should it see fit to include such an exception.

5.

An action must be prosecuted in the name of the real party in interest. If a city violates a detainee's constitutional rights, then the city is liable to the detainee for damages, not the county sheriff.

6.

Substantial compliance with the notice provisions of K.S.A. 12-105b(d) is not a prerequisite to bringing a contract claim against a municipality.

7.

The district court is considered an expert in the area of attorneys' fees and can draw on and apply its own knowledge and expertise in evaluating their worth. However, in determining the reasonableness of a requested attorney fee, the factors in Kansas Rule of Professional Conduct 1.5(a) (2023 Kan. S. Ct. R. at 333) should be considered.

Appeal from Atchison District Court; DAVID J. KING, judge. Opinion filed April 14, 2023. Affirmed in part, reversed in part, and remanded with directions.

Patric S. Linden, *Kevin D. Case*, and *Cory R. Buck*, of Case Linden Kurtz Buck P.C., of Kansas City, Missouri, for appellant.

Curtis L. Tideman, of Lathrop GPM LLP, of Kansas City, Missouri, and *Robert D. Campbell*, of Campbell Law Office, PA, of Atchison, for appellee.

Before ARNOLD-BURGER, C.J., BRUNS and ISHERWOOD, JJ.

ISHERWOOD, J.: The City of Atchison (City) filed a petition for writ of mandamus asking the district court to compel Jack Laurie, the Sheriff of Atchison County, to accept all prisoners committed to him by the City police as required by K.S.A. 19-1930(a) ("The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody by the authority . . . of any city located in such county."). Laurie claimed that K.S.A. 19-1930 afforded him with the discretion to reject detainees from the City when he believed the detainees required a medical evaluation. Laurie accused the City of acting with deliberate indifference towards the medical needs of its detainees in violation of the detainees' constitutional rights and advanced four counterclaims seeking to enjoin the City from committing such further violations and to obtain an order for the City to pay the expenses incurred by the county in maintaining detainees for the City. The district court dismissed Laurie's counterclaims, granted summary judgment to the City, and awarded attorney fees to the City for prosecution of the successful mandamus claim.

We affirm the district court's dismissal, grant of summary judgment, and decision to award attorney fees. However, we remand the case for the court to analyze whether the amount of attorney fees awarded was reasonable and to provide an explanation for its findings.

FACTUAL AND PROCEDURAL BACKGROUND

The City filed a petition for writ of mandamus in December 2020 which alleged that City police officers arrested Sidney Kye Jr. for felony aggravated domestic battery the previous day. Officers for the Atchison Sheriff's Department were monitoring the police radio traffic around the time of Kye's arrest and heard that Kye was naked and appeared to be intoxicated. When the police brought Kye to the county jail, Captain

Travis Wright refused to accept Kye as a prisoner because of Kye's bizarre behavior. According to the City, Captain Wright claimed he could refuse a prisoner for any reason because he wrote the jail policy. As a result, police officers were forced to transport Kye to the Doniphan County jail instead.

The City's petition argued that the county jail was required to accept Kye under K.S.A. 19-1930, which provides, in part:

> "(a) The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody by the authority of the United States or by the authority of any city located in such county and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law. The county maintaining such prisoners shall receive from the United States or such city compensation for the maintenance of such prisoners in an amount equal to that provided by the county for maintenance of county prisoners and provision shall be made for the maintenance of such prisoners in the same manner as prisoners of the county. The governing body of any city committing prisoners to the county jail shall provide for the payment of such compensation upon receipt of a statement from the sheriff of such county as to the amount due therefor from such city." K.S.A. 19-1930(a).

The City requested a writ of mandamus be issued to Laurie as Sheriff of Atchison County to compel him to accept all prisoners committed to his custody by the authority of any city located in Atchison County. The district court promptly issued a peremptory order per K.S.A. 60-802(b) requiring Laurie to accept Kye into county custody.

Laurie responded with an answer and counterclaims. He alleged that the City engaged in a practice that he named "detour and dump" rather than assessing whether arrestees required medical care and providing such care when necessary. Laurie asserted that "City police officers detour sick or injured persons in their custody to the Atchison County Jail to dump them there and thereby unlawfully impose those costs upon the County." See K.S.A. 2022 Supp. 22-4612(a) (the cost of providing care for a person in

custody falls upon the agency having custody of the person at the time the decision to seek medical treatment is made). As sheriff, Laurie believed he had the right and duty to set reasonable regulations for the operation of the jail. See K.S.A. 19-811 ("The sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the same, and shall keep such jail himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable.").

Regarding Kye, Laurie alleged that he required immediate medical attention and that the City officers who brought him to the jail lacked any personal knowledge as to Kye's medical history, the identity and health impact of any intoxicants he consumed, or whether Kye sustained an injury during the arrest. Additionally, Kye was acting '"bizarrely"' when he arrived at the jail, though Laurie did not explain what he meant by that term.

Laurie further noted that the United States Constitution protects detainees from deliberate indifference to serious medical needs and that Kansas law, K.S.A. 2022 Supp. 21-5416, also makes the knowing neglect of a confined person by a police officer a class A misdemeanor. Laurie argued that the City failed to uphold its legal duties towards detainees simply so it could "avoid the financial consequences of a determination that such a person needs medical care." Given these circumstances, he did not believe mandamus was appropriate.

Laurie also made four counterclaims which offered a more expansive factual basis than that set forth in the City's petition as Laurie included several examples of what he perceived to be the City's "dump and detour" policy in action. These fell into three categories.

The first category highlighted instances where the City allegedly deliberately disregarded medical needs of detainees or actively concealed information about the

detainees' health before delivering them to the County jail. The incident with Kye fell under this umbrella. Another example involved the City police arresting the driver of a vehicle for DUI. After crashing the vehicle into a rock wall, which caused the airbags to deploy, the driver could not exit the vehicle under his own strength. He had blood on his face and could not maintain his balance. But rather than transport him for a medical evaluation, the City officers took him to the jail. Jail officials took the detainee to the hospital where he spent multiple nights in the Intensive Care Unit for bleeding in his brain.

The second category of allegations involved situations where the City would purportedly "unarrest" people in its custody to avoid incurring the cost of medical evaluation and treatment. As an example, Laurie recounted a situation where City officers arrested someone on an outstanding warrant. They took the detainee to the jail at which time she stated she was high on drugs and planned to hang herself. She then repeatedly banged her head against the wall of the intake area resulting in a cut on her forehead. When the jail informed the City that the detainee needed medical treatment, the arresting officer called EMS and "unarrested" the detainee. The detainee refused the offered medical treatment and, despite the fact she had an outstanding warrant, officers did not arrest her after she declined treatment. The following week, officers again arrested the woman on the same warrant. While in the patrol vehicle, she slammed her head against the dashboard and window which caused her head to bleed. The police "unarrested" her when emergency medical services arrived.

The third category encompassed cases where City officers declined to arrest someone who needed medical treatment in order to avoid the costs associated with the treatment. Laurie's example involved the same woman as in the second category of cases. Three days after "unarresting" the woman, police officers again attempted to arrest her. After leading them on a chase, the woman tried hiding in a vehicle. She then slammed her head against the window of the vehicle again which caused her head to bleed again. The

officers contacted EMS but did not arrest the woman despite the chase and outstanding warrant.

Laurie argued that the City's practice deprived detainees of their constitutional right to receive medical treatment. He also asserted that the practice was a threat to public safety because it allowed persons accused of crimes to go free when they should be in police custody. Finally, Laurie contended that the conduct resulted in harm to the county by shifting the cost of the detainees' medical treatment to the county sheriff's budget.

Laurie's first counterclaim included a request for injunctive relief. He asked the district court to enjoin the City from transferring custody of detainees to the county without first fulfilling their obligation to address the medical needs of the detainees. He also asked the court to enjoin the City from actively concealing relevant medical information about such detainees from jail personnel.

The second count of the counterclaim alleged a violation of Laurie's statutory right to recovery. He cited K.S.A. 19-1930(a) and argued a city must compensate a county for maintaining prisoners. Laurie alleged that the City violated this provision when it failed to pay him for the expenses he incurred in maintaining the prisoners. While he said discovery was necessary to ascertain the precise amount the City owed, he believed the amount likely exceeded $10,000.

The third count asserted a breach of implied contract. Laurie argued an implied contract was formed when the jail accepted detainees from the City, and that acceptance was based on a reasonable belief that the City fulfilled its legal obligations to address the medical needs of the detainees and inform jail officials of any pertinent medical information. According to Laurie, acceptance was also based on the belief that the City would pay the county for the expenses the jail incurred in keeping the detainees. Thus,

the City breached this implied contract by failing to uphold its obligations which resulted in damages to the county.

The fourth and final counterclaim was for quantum meruit and was similar to the claim for breach of implied contract. Laurie noted that the county conferred a benefit on the City by accepting detainees and covering medical costs that the City should have paid. Laurie argued it was unfair for the City to retain the benefit without paying the cost of maintaining and treating the detainees.

The City responded with a motion to dismiss Laurie's counterclaims and argued that Laurie was not the real party in interest for any of the counterclaims. It pointed out that K.S.A. 2022 Supp. 60-217 requires an action to "be prosecuted in the name of the real party in interest," thus, any constitutional claims belonged to the detainees, and claims regarding amounts owed to the county would belong to the county, not Laurie. The City also argued that Laurie failed to adhere to K.S.A. 12-105b, which required Laurie to serve written notice of his claims on the City as a prerequisite to bringing any claims against it. The district court dismissed the counterclaims with prejudice for the reasons set forth in the City's motion to dismiss.

The City next moved for summary judgment on its petition for writ of mandamus and argued that K.S.A. 19-1930 required Laurie to accept detainees from the City with no exceptions. It also requested attorney fees as damages. See *Link, Inc. v. City of Hays*, 268 Kan. 372, 375, 997 P.2d 697 (2000) ("K.S.A. 60-802[c] authorizes an award of attorney fees in mandamus actions on a finding that refusal to perform a duty was unreasonable.").

The City included its own details about the Kye incident in its memorandum in support of the motion for summary judgment. The facts were derived from an affidavit by Captain Travis Eichelberger with the City police and a narrative report he made just after the incident. The City also included a narrative report from Captain Wright with the

Atchison County Sheriff's Office. Captain Wright's report stated that he overheard radio traffic from the City police that they had Kye in custody and he was naked and intoxicated. Captain Eichelberger called Captain Wright before bringing Kye to the jail and Wright informed Eichelberger that bizarre behavior was an indicator of a health issue and was listed on the jail's medical screening questionnaire so it would not accept custody of Kye. Captain Eichelberger disputed the jail's authority to refuse custody of a detainee and brought Kye to the jail anyway. Captain Wright brought out the questionnaire and read the relevant question to Captain Eichelberger, "'Does the arrestee act/talk in a strange manner?'" and explained that because the answer was yes, the City police needed to have a medical provider clear Kye. The City denied that Kye ever required medical attention but, nevertheless, there was no exception to K.S.A. 19-1930 for detainees who needed medical treatment.

The district court granted summary judgment to the City and found that Laurie "failed to offer any valid reason for his refusal to accept prisoners from the City of Atchison as required by K.S.A. 19-1930." The court instructed the City to submit its claim for attorney fees to the court for review and stated that once damages were determined the court would issue a final judgment.

The City claimed that it incurred $96,700.50 in attorney fees and $4,598 in costs. Laurie argued that the City should not receive attorney fees for obtaining the writ of mandamus because his actions were not unreasonable and the City had no basis for recovering fees expended to defend against his counterclaims. The district court ordered the City to designate which attorney fees were incurred prosecuting the mandamus claim and which were incurred defending against Laurie's counterclaims. After reviewing the City's response, the district court awarded the City $42,537.25 in attorney fees for prosecuting the mandamus claim. This amount represented half of the amount of fees claimed for time that was related to both the prosecution of the mandamus claim and

defense of the counterclaims and all of the fees claimed after dismissal of Laurie's counterclaims.

Laurie appealed.

ANALYSIS

The district court properly granted the City's request for summary judgment.

Laurie first argues that the district court erred in granting summary judgment to the City on its petition for writ of mandamus. He asserts that despite the mandatory language of K.S.A. 19-1930, he has discretion to defer acceptance of a detainee when he believes the detainee is in need of immediate medical evaluation or treatment.

Appellate courts review the district court's denial of a motion for summary judgment de novo, viewing the facts in the light most favorable to the party opposing summary judgment. If reasonable minds could differ about the conclusions drawn from the evidence—meaning there is a genuine issue about a material fact—then summary judgment should be denied. *John Doe v. M.J.*, 315 Kan. 310, 313, 508 P.3d 368 (2022). An issue of fact is not genuine unless it has legal force as to the controlling issue. A disputed question of fact which is immaterial to the issue does not preclude summary judgment. In other words, if the disputed fact, however resolved, could not affect the judgment, it does not present a "genuine issue" for purposes of summary judgment. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 934, 296 P.3d 1106, *cert. denied* 571 U.S. 826 (2013). Resolution of this issue also involves statutory construction, an issue over which we exercise unlimited review. *Ambrosier v. Brownback*, 304 Kan. 907, 911, 375 P.3d 1007 (2016).

"Mandamus is a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law." K.S.A. 60-801. A "writ of mandamus seeks to enjoin an individual or to enforce the personal obligation of the individual to whom it is addressed." *State ex rel. Stephan v. O'Keefe*, 235 Kan. 1022, 1024, 686 P.2d 171 (1984). It is proper where "the respondent is not performing or has neglected or refused to perform an act or duty, the performance of which the petitioner is owed as a clear right." 235 Kan. at 1024.

Laurie's first argument is that there was a material dispute between the parties regarding whether Kye needed medical evaluation which precluded summary judgment. The City disagrees that it mistreated arrestees, but asserts that the factual dispute is immaterial because there are no exceptions to K.S.A. 19-1930. The crux of this case is whether K.S.A. 19-1930 is mandatory or whether it permits the discretion Laurie claims. If the statute is mandatory, then the disputed fact is not material.

K.S.A. 19-1930(a) states that the sheriff "shall receive all prisoners committed to" his custody by the City. "[T]he word 'shall' can have different meanings in different provisions." *Ambrosier*, 304 Kan. at 912. In some contexts, the word is used to create a mandatory duty whereas in others it is used in a directory manner. A directory provision creates a discretionary duty, and "[m]andamus cannot be invoked to compel a discretionary act." 304 Kan. at 907. "Because the word's meaning is not plain, statutory construction rather than statutory interpretation is necessary." 304 Kan. at 912. The Kansas Supreme Court has identified four factors to consider in determining whether the use of "shall" is mandatory or directory: "(1) legislative context and history; (2) substantive effect on a party's rights versus merely form or procedural effect; (3) the existence or nonexistence of consequences for noncompliance; and (4) the subject matter of the statutory provision." *State v. Raschke*, 289 Kan. 911, 921, 219 P.3d 481 (2009).

Though neither party explicitly analyzes these factors, they provide a helpful framework for discussion of the issue.

K.S.A. 19-1930 has been in effect since 1963. L. 1963, ch. 174, § 1. The operative provision has remained substantially the same. The enacting legislation repealed three similar statutes which had been part of Kansas law since the 1800s. L. 1963, ch. 174, §§ 1-2. There is no helpful legislative history to guide our analysis and neither party discusses the history of the statute. However, it is worth noting that although this statutory language, or at least a similar version of it, has been a part of Kansas law for 150 years, Laurie can point to no authority interpreting the language as merely directory.

The next factor examines whether a statute has a substantive or procedural effect on a party's rights. A directory provision creates "'a mode of proceeding and a time within which an official act is to be done and is intended to secure order, system and dispatch of the public business.' [Citation omitted.]" *Raschke,* 289 Kan. at 916. Kansas courts have held that statutes are procedural, despite using the word shall, in cases where a statute dictated that a ministerial task had to be completed within a certain amount of time, such as issuing a final order, certifying various filings, or endorsing witnesses. See 289 Kan. at 919-20. This provision is substantive. It is not simply a mode of procedure that is intended to aid in the dispatch of public business. It does not set timelines for ministerial tasks. Rather, it requires the sheriff to immediately accept any prisoner committed to his custody by the City. If county sheriffs refuse to comply with the statute, for whatever reason, city police may lack the resources to keep custody of any detainees which would have a substantive impact on the city.

The third factor asks whether there are consequences for noncompliance. K.S.A. 19-1930 does contain a consequence for noncompliance as it provides: "If any sheriff or jailer neglects or refuses to perform the services and duties required by the provisions of this act, the sheriff or jailer shall be subject to the same penalties, forfeitures and actions

as if the prisoners had been committed under the authority of this state." K.S.A. 19-1930(f). This factor clearly weighs in favor of interpreting K.S.A. 19-1930(a) as mandatory.

The Kansas Attorney General came to the same conclusion in a 2007 opinion. Att'y Gen. Op. No. 2007-39. The District Attorney of Wyandotte County asked the Attorney General for advice regarding the duties of the Wyandotte County sheriff and jail to accept custody of arrestees from the Kansas City Police Department (KCPD). The dispute arose because neither the KCPD nor the Wyandotte County Sheriff's Office wanted to incur the cost of having custody of an arrestee at the hospital. The KCPD wanted to transfer custody to the sheriff as soon as possible, but the sheriff had "adopted a screening process at the county jail that utilizes the assistance of a trained nurse and refuses to accept certain arrestees without first obtaining a doctor's written medical clearance." Att'y Gen. Op. No. 2007-39. The District Attorney provided several scenarios, which included the following examples:

> "Scenario Three: An individual appears before a municipal judge for sentencing on a misdemeanor charge but is determined to be under the influence and the judge cannot enter a sentence. The municipal judge therefore orders the individual to be incarcerated in the county jail until he or she is sober and can again be brought before the court. You ask whether the sheriff may refuse to accept such a prisoner into the jail until such time as the prisoner receives a complete medical evaluation (at a hospital) or their blood alcohol level is lower. Scenario Four: City police officers arrest a person, either on a warrant or for probable cause, but the person is obviously under the influence, as confirmed by a nurse from the jail. If the arrestee's blood alcohol is beyond a certain level, the jail will not accept the prisoner until after receiving a written medical clearance from a physician. You ask if the detention center (sheriff) may set such standards for admission of all arrestees under the influence. Scenario Five: City police officers arrest a person, either on a warrant or for probable cause, and the prisoner needs medical attention for some reason. The city police officer takes that person to the hospital for treatment where the person is examined and eventually given a medical release and taken to jail for incarceration.

> However, the jail refuses to accept the prisoner because of the level of examination given by hospital staff or takes issue with the form of release given by the hospital. You ask if this refusal is lawful." Att'y Gen. Op. No. 2007-39.

These examples bear several similarities to the case before us. Here, too, Laurie adopted a policy under which his officers refused to accept detainees (or in Laurie's words, defer acceptance of detainees) from the City unless the detainee first received what the sheriff, in his sole discretion, deems to be necessary medical evaluation or treatment. The Attorney General concluded that the word "shall" in K.S.A. 19-1930 was mandatory because the statute carried a penalty for noncompliance. Accordingly, a county sheriff cannot refuse "to take custody of persons arrested by city law enforcement officers and presented to the sheriff or jailer at a county jail, no matter the circumstances." Att'y Gen. Op. No. 2007-39.

Kansas courts are "not bound by the conclusions of attorney general opinions; however, the opinions are persuasive authority." Data Tree v. Meek, 279 Kan. 445, 455, 109 P.3d 1226 (2005). In this case, there is no reason to disagree with the Attorney General's opinion. K.S.A. 19-1930 clearly carries a penalty for noncompliance, a factor which strongly suggests that the word "shall" is mandatory.

The final factor is the subject matter of the statutory provision. Laurie's arguments primarily fall under this umbrella. The subject matter of the statute deals with custody of arrestees and compensation for the counties who maintain prisoners for a city or the federal government. Laurie acknowledges that the statute creates a duty for the sheriff to accept proffered detainees into the county jail but argues that the duty established in K.S.A. 19-1930(a) "must be construed alongside other statutory provisions dealing with the same or related subjects."

Laurie references several duties which he believes render K.S.A. 19-1930(a) merely directory. He notes that Kansas law imposes a duty on law enforcement agencies

to address a detainee's immediate medical needs. *University of Kan. Hosp. Auth. v. Board of Comm'rs of Unified Gov't*, 301 Kan. 993, 1005, 348 P.3d 602 (2015). Mistreatment of a confined person, defined as "knowingly abusing, neglecting or ill-treating any person, who is detained or confined by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution," is a class A person misdemeanor. K.S.A. 2022 Supp. 21-5416. Kansas law also prohibits law enforcement officers from releasing a "person from custody merely to avoid the cost of necessary medical treatment" unless the health care provider consents to such a release or a court orders it. K.S.A. 22-4613(a). The United States Supreme Court has also held that deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment in violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). The City does not dispute that it owes these duties to arrestees but argues that even if it failed to satisfy its duties to arrestees, it did not excuse Laurie from complying with K.S.A. 19-1930.

We do not find Laurie's argument persuasive. He asserts that his policy of refusing detainees until the City takes them for medical evaluation promotes the welfare of the detainees by ensuring they are treated in a constitutional fashion. But the facts of this case demonstrate that this is not what truly occurs. Jail officials refused to accept Kye because, in Laurie's opinion, he was suffering from a potentially life-threatening condition. Yet rather than accept custody of Kye and address his medical needs, Laurie turned him away and left him with the very agency that Laurie believed was violating his rights. Kye was ultimately taken to the Doniphan County jail and did not receive a medical evaluation. A policy like Laurie's which leaves detainees with agencies that are allegedly violating the detainees' constitutional rights does not accomplish Laurie's proffered goal of promoting the detainees' health and constitutional rights. Laurie also cites no legal support for the proposition that a county sheriff is excused from performing his statutory duties when city police violate a detainee's rights.

Another problem with Laurie's argument is that it would give total discretion to the sheriff to determine when a detainee's rights were violated. This means that Laurie would be the sole arbiter of whether a detainee had medical needs and whether his or her rights were violated. It would not matter if, as in this case, there was a substantial disagreement over whether the detainee needed medical treatment. If K.S.A. 19-1930 was intended as directory, then it likely would have included guidance on how sheriffs were to exercise the discretion granted by the statute. Missouri has such a law, which provides:

> "1. It shall be the duty of the sheriff and jailer to receive, from constables and other officers, all persons who shall be apprehended by such constable or other officers, for offenses against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailer shall refuse to receive any such person or persons, he or she shall be adjudged guilty of a misdemeanor, and on conviction shall be fined in the discretion of the court.
>
> "2. The sheriff and jailer shall not be required to receive or detain a prisoner in custody under subsection 1 of this section until the arresting constable or other officer has had the prisoner examined by a physician or competent medical personnel if the prisoner appears to be:
>
> (1) Unconscious;
> (2) Suffering from a serious illness;
> (3) Suffering from a serious injury; or
> (4) Seriously impaired by alcohol, a controlled substance as defined in section 195.017, a drug other than a controlled substance, or a combination of alcohol, a controlled substance, or drugs.
>
> "3. The cost of the examination and resulting treatment under subsection 2 of this section is the financial responsibility of the prisoner receiving the examination or treatment." Mo. Rev. Stat. § 221.040.

The absence of such language to guide the sheriff's discretion in K.S.A. 19-1930 supports a finding that the statute is mandatory and not directory. The general statutes grant Laurie discretion in many aspects of operating the jail, but they do not authorize him to violate other, more specific statutory mandates. See *In re Guardianship of Sokol*, 40 Kan. App. 2d 57, 63, 189 P.3d 526 (2008) ("When a court is presented with a general statute and a specific statute governing the same circumstances, the court should attempt to read the statutes together in harmony with one another. If the statutes cannot be read in harmony, the specific statute will generally control over the general statute, unless a contrary intent is clearly expressed by the legislature."). For example, if Laurie had provided his inmates "icy cold Bohemia-style beer" as a reward for free tax advice, as the guard did in The Shawshank Redemption, he would be in violation of K.S.A. 19-1907 (declaring it a misdemeanor for a jailer to provide intoxicating liquor to an inmate). See *The Shawshank Redemption* (Warner Brothers Pictures 1994). If we accepted Laurie's argument that the sheriff has full discretion over jail operations, our decision would render K.S.A. 19-1907 meaningless. "[W]e assume the legislature does not enact useless or meaningless legislation." *Ft. Hays St. Univ. v. University Ch., Am. Ass'n of Univ. Profs.*, 290 Kan. 446, 464, 228 P.3d 403 (2010). Laurie's argument that K.S.A. 19-811 or K.S.A. 19-1903 provides sheriffs with complete discretion over jail operations is not persuasive.

Laurie makes one other argument that warrants discussion. The first sentence of K.S.A. 19-1930(a) states: "The sheriff . . . shall receive all prisoners committed to the sheriff's . . . custody by the authority of . . . any city located in such county and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law." Laurie directs our attention to the phrase "in the same manner as prisoners of the county" and asserts that if county officers had brought a detainee to the jail who, in Laurie's opinion, needed medical evaluation, then the jail would have refused to accept them as well. Therefore, he treated detainees from the City "in the same manner as prisoners of the county" and fulfilled the requirements of K.S.A. 19-1930.

We do not find Laurie's contention compelling because he fails to consider the other primary dictate of K.S.A. 19-1930—to "receive all prisoners." When construing statutes to determine legislative intent, appellate courts must consider various provisions of an act *in pari materia* with a view of reconciling and bringing the provisions into workable harmony if possible. *Miller v. Board of Wabaunsee County Comm'rs*, 305 Kan. 1056, 1066, 390 P.3d 504 (2017). Laurie's interpretation of the statute ignores the other operative language. Compliance with the second duty listed in K.S.A. 19-1930(a) does not equal compliance with the first duty listed in K.S.A. 19-1930(a).

This court cannot rewrite K.S.A. 19-1930(a) to include an exception where the sheriff of a county believes a detainee needs medical attention. If the Legislature wishes to amend the statute to address Laurie's concerns, it is free to do so. But in its current form, the statute requires a county sheriff to accept detainees without exceptions. For these reasons, we affirm the district court's grant of summary judgment to the City.

The district court properly dismissed Laurie's counterclaims.

Next, Laurie argues that the district court erred in dismissing his counterclaims. He asserts that he had standing to bring the counterclaims and they were not subject to K.S.A. 12-105b.

"Whether a district court erred by granting a motion to dismiss for failure to state a claim is a question of law subject to unlimited review." *Jayhawk Racing Properties v. City of Topeka*, 313 Kan. 149, 154, 484 P.3d 250 (2021). We view the well-pleaded facts in a light most favorable to the plaintiff and assume as true those facts and any inferences reasonably drawn from them. If those facts and inferences state any claim upon which relief can be granted, then dismissal is improper. Dismissal is proper only when the allegations in the petition clearly demonstrate the plaintiff does not have a claim.

Kudlacik v. Johnny's Shawnee, Inc., 309 Kan. 788, 790, 440 P.3d 576 (2019); see K.S.A. 2022 Supp. 60-212(b)(6).

The district court's ruling on this point was somewhat unclear. In the journal entry granting the City's motion for summary judgment, the district court simply said that it ruled in favor of the City "for the reasons set forth in the [City's] Motion to Dismiss and supporting suggestions." See *Breedlove v. State*, 310 Kan. 56, 60, 445 P.3d 1101 (2019) ("[A]lthough we have frowned on the practice of a district court adopting a party's findings in their entirety, we have declined to adopt a bright-line rule that to do so is automatic error."). When ruling orally on the motion after hearing argument, the district court suggested additional bases for its order. Because "a district court's journal entry of judgment in a civil case controls over its prior oral statements from the bench," we will examine the City's filings to determine the bases upon which the district court seemingly ruled. *Uhlmann v. Richardson*, 48 Kan. App. 2d 1, 10, 287 P.3d 287 (2012).

The City believed dismissal of Laurie's counterclaim was warranted for two reasons: (1) Laurie was not the real party in interest under K.S.A. 2022 Supp. 60-217; and (2) Laurie failed to comply with K.S.A. 12-105b, which is a prerequisite for suing the City. On appeal, Laurie argues that he was the real party in interest under K.S.A. 2022 Supp. 60-217. He also argues that he was not obligated to provide written notice consistent with K.S.A. 12-105b(d) because he was not bringing tort claims.

A. K.S.A. 2022 Supp. 60-217

K.S.A. 2022 Supp. 60-217(a)(1) states that "[a]n action must be prosecuted in the name of the real party in interest." However, Laurie notes that the statute allows "a party authorized by statute" to "sue in their own names without joining the person for whose benefit the action is brought." K.S.A. 2022 Supp. 60-217(a)(1). Though Laurie cites the

rule permitting a party authorized by statute to sue without joining the real party in interest, his argument seems to focus on the assertion that he is the real party in interest.

In his first counterclaim, Laurie requested injunctive relief preventing the City from bringing detainees to the jail without providing medical evaluation and preventing the City from actively concealing pertinent medical information about detainees from jail personnel. The City argued that, insofar as there was a violation of any detainee's right to medical treatment, the detainee would be the real party in interest. Laurie does not dispute that the detainees could bring claims, but he argues that he should also be considered a real party in interest.

Laurie begins by again noting the general statutes providing the sheriff with authority over jail operations. See K.S.A. 19-811; K.S.A. 19-1903; *Robinson v. State*, 198 Kan. 543, 546, 426 P.2d 95 (1967) ("We believe [the sheriff] has the right, as well as a duty, to set reasonable regulations for the operation of the jail and the conduct of his prisoners."). Laurie asserts that he had standing to bring his counterclaims because the City's actions infringed upon his ability to uphold his statutory and constitutional duties. He asserts that the sheriff has had to expend resources treating the medical needs of detainees that the City should have paid for. He also complains that the City's actions expose the sheriff to "legal liability for injuries a detainee may suffer as a result of the City's non-disclosure or failure to promptly deliver the detainee to a medical care provider for treatment."

We affirm the district court's decision on this point. Laurie's claim that the City's actions expose him to liability is not convincing. If the City violates a detainee's constitutional rights, then the City is liable to the detainee for damages, not Laurie. So long as Laurie and jail officials treat detainees appropriately the City's actions should not matter. Additionally, the sheriff is not responsible for payment of the medical expenses for detainees; that obligation lies with the board of county commissioners. See K.S.A. 19-

1910(a) ("When a prisoner is committed to a county jail in a criminal action, the board of county commissioners shall allow the sheriff reasonable charges for maintaining such prisoner.").

For similar reasons, we find that the district court properly dismissed Laurie's other three counterclaims. The second counterclaim was for violation of the statutory right to recovery in K.S.A. 19-1930. The statute provides that a city must compensate the county for maintaining prisoners. Payment is due "upon receipt of a statement from the sheriff of such county as to the amount due therefor from such city." K.S.A. 19-1930(a). There is no indication that Laurie provided a statement to the City as to the amount due. In fact, Laurie said "[t]he precise amount of the City's unpaid maintenance costs will require discovery to ascertain." In any event, the City does not pay Laurie, it pays the county. This means the county is the real party in interest, not Laurie.

The final two counterclaims were for breach of implied contract and quantum meruit. Again, these sought the cost of maintaining prisoners brought to the county jail by the City. As stated, the right to maintenance belongs to the county, not Laurie, so Laurie is not the real party in interest.

"'The meaning and object of the real party in interest provision would be more accurately expressed if it read: An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced.' [Citation omitted.]" *Torkelson v. Bank of Horton*, 208 Kan. 267, 270, 491 P.2d 954 (1971). Laurie alleges that the City has violated the rights of detainees and the rights of the county, but he has failed to demonstrate that his rights were impacted by the City's alleged actions. Therefore, we affirm the district court's decision to dismiss Laurie's counterclaims.

B. K.S.A. 12-105b

The district court had an alternate basis for its ruling—Laurie failed to comply with K.S.A. 12-105b. Subsection (a) of this statute says that "[a]ll claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section." K.S.A. 12-105b(a). This court has previously explained that "Subsection (a) applies to *all* claims a person may have against cities." *Wiggins v. Housing Authority of Kansas City*, 19 Kan. App. 2d 610, 611, 873 P.2d 1377 (1994). Subsection (d) of the statute creates additional notice requirements when a person has a claim against a city which could give rise to an action brought under the Kansas Tort Claims Act. K.S.A. 12-105b(d).

Due to the district court's lack of specific findings, it is difficult to ascertain whether the court ruled under K.S.A. 12-105b(a) or (d). The district court ruled "for the reasons set forth in the Motion to Dismiss and supporting suggestions." The City's motion said, "[t]here has been no written claim made under K.S.A. 12-105b, which is a prerequisite for a claim against the City of Atchison." The City's suggestions in support only mentioned K.S.A. 12-105b(d), not K.S.A. 12-105b(a). After Laurie filed his response, the City filed a reply in which it discussed the language in K.S.A. 12-105b(a). In his appellate brief, Laurie highlights the fact the City did not raise any issue concerning K.S.A. 12-105b(a) in the initial memorandum it filed in support of its motion to dismiss. He does not address K.S.A. 12-105b(a) in his appellate brief.

Regardless of which subsection the district court relied upon, error ultimately occurred. It is true that substantial compliance with the notice provisions of K.S.A. 12-105b(d) is a prerequisite to bringing a tort claim against a municipality, but Laurie did not bring a tort claim against the City so the provision is inapplicable.

The City asserts that K.S.A. 12-105b(a) also requires written notice of non-tort claims as a prerequisite to filing suit against a municipality. However, this is not evident from the language of the statute. K.S.A. 12-105b(d) states that written notice is required before commencing an action. K.S.A. 12-105b(a) contains no such requirement. In contrast to the plentiful caselaw on K.S.A. 12-105b(d), there is very little guidance on K.S.A. 12-105b(a) and none that supports the City's position. This court did have an opportunity to examine the distinction between the two subsections in *Wiggins*, 19 Kan. App. 2d 610, and following an examination of the language and history of the statute, we concluded that people "with contract claims are *not* required to give notice before filing suit." 19 Kan. App. 2d at 611.

Although we find that the district court erred on this particular point, we still affirm the district court's decision dismissing Laurie's counterclaims because Laurie did not have standing to bring those claims.

The amount of attorney fees the district court awarded to the City was erroneous.

In his final argument on appeal, Laurie argues that the district court erred in awarding attorney fees to the City. He challenges both the district court's authority to award the fees as well as the amount of the award.

The issue of the district court's authority to award attorney fees is a question of law over which appellate review is unlimited. *In re Estate of Oroke*, 310 Kan. 305, 317, 445 P.3d 742 (2019). Here, the district court claimed authority to award attorney fees under K.S.A. 60-802(c). This statute "authorizes an award of attorney fees in mandamus actions on a finding that refusal to perform a duty was unreasonable." *Link, Inc.*, 268 Kan. at 375. When the district court is authorized to award attorney fees, "[t]he amount of an attorney fee award is within the sound discretion of the district court and will not be

disturbed on appeal absent a showing that the district court abused that discretion." 268 Kan. at 381.

A. Did Laurie act unreasonably, thus warranting an award of attorney fees?

The first question is whether the district court was authorized to award attorney fees to the City. This question turns on whether Laurie's refusal to accept Kye as a prisoner was unreasonable. Analysis of this issue "requires a consideration of the motives of the actor in failing to act." *Corder v. Kansas Bd. of Healing Arts*, 256 Kan. 638, 661, 889 P.2d 1127 (1994).

The language of K.S.A. 19-1930(a) is clear—Laurie "shall receive all prisoners" committed to his custody by the authority of any city located in Atchison County. Despite this clear directive, Laurie argues that his violation of the statute was reasonable because "he was operating under the good-faith belief that Kansas law did not permit the [City police] to ignore Kye's immediate medical needs before bringing him to the Jail and releasing custody of him to the Jail." He asserts that he was motivated to reject Kye because he could not "stand back and let the City continue to deliberately cause its detainees to receive delayed treatment (in a clear effort by the City to attempt to evade the costs of such treatment) for their immediate medical needs . . . ."

For several reasons, Laurie's argument is not persuasive. There is simply no authority to support the idea that one agency's alleged violation of a detainee's constitutional rights excuses another agency's duty to act under a statute. As explained earlier, this is not a good public policy. Laurie claims to be motivated by his concern that detainees are not receiving proper medical treatment but his refusal to accept Kye did nothing to help Kye receive medical treatment. Instead of helping Kye, Laurie's decision left him in the custody of an agency that allegedly disregarded his serious medical needs.

Thus, as the district court noted, Laurie's response was not reasonable and did nothing to protect constitutional rights of detainees. Laurie could have filed his own mandamus or declaratory judgment action, or he could have referred the offending police officers for discipline or prosecution. He could have assisted detainees who wished to sue the City for violation of their constitutional rights. But there was no reasonable basis, either in policy or in the language of the statute, for Laurie to refuse custody of Kye. Consequently, we affirm the district court's decision to award attorney fees to the City.

B. Did the district court abuse its discretion in setting the amount of the attorney fee award?

The second issue is whether the district court abused its discretion in determining the amount of attorney fees. A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018).

The district court is considered "an expert in the area of attorneys' fees and can draw on and apply its own knowledge and expertise in evaluating their worth." *Buchanan v. Employers Mutual Liability Ins. Co.*, 201 Kan. 666, Syl. ¶ 9, 443 P.2d 681 (1968). However, the Kansas Supreme Court has directed that in determining the reasonableness of an attorney fee, the factors in Kansas Rule of Professional Conduct 1.5(a) (2023 Kan. S. Ct. R. at 333) "should be considered." *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, Syl. ¶ 6, 135 P.3d 1127 (2006). This rule provides:

> "(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent." KRPC 1.5(a) (2023 Kan. S. Ct. R. at 333).

There were few references to KRPC 1.5 throughout the case. Initially, the parties focused their arguments on whether the City could claim fees that were generated while defending the counterclaim or whether the City's award should be limited to fees generated solely on the City's mandamus claim. When the City first moved for attorney fees, it requested fees for all the time spent on the case. In response, Laurie objected on the basis that the City was requesting fees spent on defense of his counterclaims. The City replied that the counterclaim issues were indistinguishable from the mandamus issues. When the district court heard arguments on the matter, most of the discussion focused on this dispute. At the end of the hearing, the court did ask the City to categorize its fees based on whether the fee was generated prosecuting the mandamus action or defending against counterclaims.

Just under a month after the hearing, Laurie moved the court to enter an order without attorney fees because the City had not yet submitted a categorization. Laurie also complained that the City "failed to provide a statement of the fees at the prevailing rate for such mandamus litigation work in Atchison County, Kansas. Rather, the City has provided a statement of fees calculated at the rate for an attorney in Kansas City, Missouri." The City filed an affidavit from its attorney shortly thereafter. The affidavit stated that the firm billed one attorney at $535 per hour and another attorney at $445 per hour, which constituted a discount from both attorneys' standard rates. The City also conclusively asserted that its charges were reasonable under factors 1, 3, 4, and 7 in

KRPC 1.5. The affidavit separated the claimed fees into three categories: time spent defending against the counterclaim, time spent prosecuting the mandamus claim, and time that was spent on both claims when issues were related. The fees in this third category, time spent simultaneously working on the mandamus claim and counterclaims, were "overwhelmingly discovery related." Laurie's response noted that the City failed to address all eight factors in KRPC 1.5. He also claimed that discovery was not necessary for the City to prevail on its mandamus claim, so fees related to discovery should not be recoverable.

The district court's ruling did not mention KRPC 1.5 and it awarded the City the full requested amount for time spent litigating the case after dismissal of the counterclaims ($22,095.50). The court awarded the City half of the fees that it claimed were related to both prosecution of the mandamus claim and defense of the counterclaims ($20,441.75). It denied the City's request for the cost of deposition transcripts and in so doing, noted that discovery was not needed for summary judgment because there were no material facts in dispute and resolution of the City's mandamus claim was a question of law.

On appeal, Laurie argues that the district court abused its discretion by failing to consider the KRPC 1.5 factors. He notes that the City provided no factual support for its conclusory assertion that its fees was reasonable under factors 1, 3, 4, and 7 of the Rule. He also contends the City failed to support its assertion that rates of $445 and $535 per hour were fees customarily charged in Atchison County for similar legal services. Finally, he questions the district court's award of attorney fees for time spent on discovery matters, especially given its explicit finding that the City did not utilize any meaningful discovery in moving for summary judgment. The City relies on the proposition that the district court is considered an expert in assessing attorney fees and asserts that the content of the court's order was sufficient.

There is no bright-line rule that the district court must specifically address the KRPC 1.5 factors. See *State ex rel. SRS v. Cleland*, 42 Kan. App. 2d 482, 496, 213 P.3d 1091 (2009) (affirming attorney fee award even though district court did not explicitly mention the KRPC 1.5 factors because it was obvious from the court's ruling that it considered the reasonableness of the claimed fees); see also *In re Marriage of Strieby*, 45 Kan. App. 2d 953, 975, 255 P.3d 34 (2011) ("Although the trial court did not expressly address the factors in KRPC 1.5[a] in its initial award of attorney fees, the court did generally discuss some of the factors, including the results obtained, the reasonableness of the fee, and counsel's expertise. Based on the record before us, and in light of our standard of review, we cannot say that the trial court abused its discretion in awarding fees of $5,500 to Linda.").

In this case, in contrast to *Cleland* and *In re Marriage of Strieby*, it is *not* obvious that the district court considered the KRPC 1.5 factors in exercising its discretion on the attorney fee award. Instead, it looks like the district court accepted the City's claimed fees at face value. While it is true that the court only awarded half of the fees that were generated for activities that assisted in prosecuting the mandamus claim and defending against the counterclaims, the district court's reasoning for this seemed to be that the City had no lawful basis to claim fees generated while defending against the counterclaims. Nothing in the record indicates that consideration of the KRPC 1.5 factors led the district court to this reduction. The district court granted the City's full request for $22,095.50 in attorney fees generated after dismissal of Laurie's counterclaims without question.

There are a couple troubling aspects of the district court's lack of analysis in the attorney fee award. For example, the first factor under KRPC 1.5 is "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." (2023 Kan. S. Ct. R. at 333). The City's claim that Laurie had to accept the prisoner was a relatively straightforward one: K.S.A. 19-1930(a) required it, no exceptions. Laurie replied that the statute was discretionary. As the district

court noted, the City's claim presented only a question of law. In fact, the district court specifically declined to award costs for depositions to the City because there were no material facts in dispute for the purposes of the City's motion for summary judgment and the only question presented was one of law. Yet, a significant portion of the attorney fees awarded by the district court were for discovery matters. The district court's decision to award attorney fees for discovery that the district court did not believe was necessary to resolve the case is concerning. There was no evidence presented or reason offered by the district court as to why these discovery-related fees should be included in the time and labor required to litigate the mandamus claim. At the time the City incurred the costs, the district court had already issued a peremptory order under K.S.A. 60-802(b) which it can only do "[w]hen the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it." The City could have moved for summary judgment before discovery and avoided a bulk of the costs.

Another troubling part of the district court's decision is its failure to demonstrate that it considered "the fee customarily charged in the locality for similar legal services." KRPC 1.5 (2023 Kan. S. Ct. R. at 333). The City's attorneys stated that they offered a discounted rate of $535 per hour for one attorney and $445 per hour for another attorney. The attorneys are from a Kansas City firm, but the case was litigated in Atchison County. Clearly, these hourly rates are significantly higher than the hourly rate claimed in *Cleland* (only $210 per hour). Neither the City nor the district court made any showing that the claimed fees in this case are customarily charged in the locality for similar legal services.

The district court's failure to discuss the KRPC 1.5 factors, the lack of evidence regarding the factors, and the court's seemingly contradictory decision to award fees for discovery the court did not think was necessary leads to the conclusion that the district

court abused its discretion in ordering the attorney fee award. We remand this case to the district court so it can reconsider the reasonableness of the attorney fee request within the framework of KRPC 1.5 and explain its findings.

Affirmed in part, reversed in part, and remanded with directions.