

STATE OF MICHIGAN  
COURT OF APPEALS

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DANIEL P. MCMANAMON,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF REDFORD,

Defendant-Appellee,

and

KEVIN KELLEY and MILES R. HANDY, II,

Defendants.

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FOR PUBLICATION

May 27, 2003

9:00 a.m.

No. 235816

Wayne Circuit Court

LC No. 99-920173-CZ

Updated Copy

July 7, 2003

Before: O'Connell, P.J., and White and B.B. MacKenzie\*, JJ.

O'CONNELL, P.J. (*dissenting*).

I respectfully dissent from the majority's opinion in this matter. In my view, the majority has improperly created a new cause of action under the Employee Right to Know Act (ERKA),<sup>1</sup> MCL 423.501 *et seq.* I would affirm the trial court's decision granting defendant Charter Township of Redford's motion for summary disposition.

The rules of statutory construction are well established:

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. We may

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<sup>1</sup> ERKA only allows for an action to "compel compliance with this act." MCL 423.511. The majority expands this right to include an independent action for injunctive relief and damages. While the act allows for an award of damages, it does so only in concert with an action to compel compliance.

not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. When reasonable minds may differ with respect to the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute. [*Silver Creek Drain Dist v Extrusions Div, Inc*, 245 Mich App 556, 562-563; 630 NW2d 347 (2001), lv gtd 466 Mich 860 (2002) (citations omitted).]

ERKA provides in pertinent part:

If an employer violates this act, an employee may commence an action in the circuit court to compel compliance with this act. . . . Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this act the following damages:

(a) For a violation of this act, actual damages plus costs.

(b) For a wilful and knowing violation of this act, \$200.00 plus costs, reasonable attorney's fees, and actual damages. [MCL 423.511.]

According to the plain language of the act, see *Silver Creek Drain Dist, supra*, the only cause of action that initially can be filed under the act is an action "to compel compliance with this act." MCL 423.511. Because plaintiff did not commence an action "to compel compliance with this act," his cause of action was properly dismissed for failure to state a claim on which relief could be granted. See MCR 2.116(C)(8). Specifically, plaintiff filed an action merely for "violation" of the act and requested injunctive relief, the latter of which is not contemplated by the act. See MCL 423.511. The majority finds an ambiguity in the statute and construes it in favor of plaintiff. However, the plain language of plaintiff's complaint simply does not constitute an action to compel compliance, see MCR 2.116(C)(8). Thus, statutory "construction is neither necessary nor permitted" in this case. *Silver Creek Drain Dist, supra*.

Because plaintiff failed to correctly plead his case and did not amend his complaint,<sup>2</sup> the trial court had no choice but to dismiss it. MCR 2.116(B)(1), and (C)(8). I believe that the procedural mechanism required by ERKA is important to assure exhaustion of remedies, to give the defendant a chance to comply with the act, and to allow valid claims for damages to be

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<sup>2</sup> Plaintiff did not move to amend his complaint and merely argued that the trial court should have allowed amendment before ruling on defendant's motion for summary disposition. This is an insufficient request to amend a pleading. See MCR 2.118.

brought to circuit court. Therefore, the majority has improperly created a new cause of action under ERKA.<sup>3</sup>

I would affirm the trial court's decision.

/s/ Peter D. O'Connell

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<sup>3</sup> I see ERKA as similar to the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Under the FOIA, one cannot maintain an independent action for damages, but must sue for compliance with the act and may recover attorney fees, costs, and damages expended in pursuing the compliance action. See, e.g., MCL 15.240. In my opinion, ERKA, like the FOIA, allows an action for compliance with the recovery of only those fees, costs, and damages incurred in procuring compliance. Compare MCL 423.511.