STATE OF MICHIGAN

COURT OF APPEALS

JOEDY PATRICK, MARTIN F. MUSSER, and JACK STENBERG,

Plaintiffs-Appellants,

v

ALAIEDON TOWNSHIP, ALAIEDON TOWNSHIP BOARD, MARVIN LOTT, BRUCE OESTERLE, ROBERT CALTRIDER, RICHARD KRANZ, and STUART THORBURN,

Defendants-Appellees,

and

JACKSON NATIONAL LIFE INSURANCE COMPANY and CITY OF LANSING,

Intervening Defendants-Appellees.

UNPUBLISHED
January 14, 2000

No. 218506
Ingham Circuit Court
LC No. 98-089294-CZ

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Plaintiffs appeal by right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(8) and (10), based on the determination that (1) the reenactment of a disputed 1984 PA 425 agreement (the 425 agreement)[1] precluded its invalidation for alleged violations of the Open Meetings Act (OMA), MCL 15.261 *et seq.*; MSA 4.1800(11) *et seq.*, and (2) plaintiffs failed to establish proper grounds for injunctive relief. We affirm.

Plaintiffs are property owners within Alaiedon Township who commenced litigation claiming that Alaiedon Township, its board, and board members (collectively, the township), violated the OMA in negotiating and entering into the 425 agreement with the city of Lansing (the city). The 425 agreement involved property owned by Jackson National Life Insurance Company (Jackson National) and located

within the township. Plaintiffs contend that the trial court erred in granting summary disposition in favor of defendants because plaintiffs pleaded sufficient factual allegations creating genuine issues of material fact, reenactment of the 425 agreement was perfunctory and in bad faith, and discovery had not yet been completed. We reject each of these arguments.

MCL 15.262; MSA 4.1800(12), defines certain terms with regard to application of the OMA and states, in pertinent part:

> (a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function. . . .
>
> (b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.
>
> * * *
>
> (d) "Decision" means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

MCL 15.263; MSA 4.1800(13), provides, in pertinent part:

> (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act . . . The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.
>
> (2) All decisions of a public body shall be made at a meeting open to the public.
>
> (3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.[2]

Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of the OMA. MCL 15.270(1); MSA 4.1800(20)(1). There is no dispute among the parties that the township is anything other than a "public body" as defined by the OMA and is therefore subject to the act.

Plaintiffs alleged that the township violated the OMA by engaging in secret deliberations and decision making regarding the approval of the 425 agreement. However, even if the township violated the OMA, it cured any violation when it reenacted its prior approval of the 425 agreement pursuant to MCL 15.270(5); MSA 4.1800(20)(5), which provides in pertinent part:

> In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of [the OMA], the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

The only requirement necessary to accomplish this curative effect under MCL 15.270(5); MSA 4.1800(20)(5) is for the public body to reenact the disputed decision in accordance with the OMA; notably, there are no provisions within the act mandating that the reenactment proceeding be "nonperfunctory" or conducted in "good faith." Our review of the record indicates that on December 28, 1998, at a public hearing held in accordance with the OMA, the township, after adequately reconsidering the issues surrounding the 425 agreement and permitting public comment, voted to approve the agreement. Thus, any violations committed by the township up to that point regarding the 425 agreement were rendered a nullity and the agreement could no longer be declared invalid. MCL 15.270(5); MSA 4.1800(20)(5).

We review a trial court's decision whether to invalidate a disputed decision made in alleged violation of the OMA for abuse of discretion. *Esperance v Chesterfield Twp,* 89 Mich App 456, 464; 280 NW2d 559 (1979). Because the township properly reenacted its decision to approve the 425 agreement, that decision stood "untainted by procedural deficiency." *Manning v City of East Tawas,* 234 Mich App 244, 252; 593 NW2d 649 (1999). Thus, the trial court did not abuse its discretion in refusing to invalidate the 425 agreement. Because we conclude that the township properly reenacted its approval of the 425 agreement pursuant to the curative provision of the OMA, it is unnecessary to address each and every OMA violation alleged to have been committed by the township.

Next, plaintiffs argue that even if invalidation of the 425 agreement was precluded, they were still entitled to injunctive relief and their costs and attorney fees incurred in bringing this action. We disagree. If a public body is not complying with the requirements of the OMA, the act authorizes a person to compel compliance or to enjoin further noncompliance. MCL 15.271(1); MSA 4.1800(21)(1). The OMA also allows a person who succeeds in obtaining relief in a civil action under the OMA to recover court costs and actual attorney fees. MCL 15.271(4); MSA 4.1800(21)(4).

A public body's violation of the OMA does not automatically mean that an injunction must issue to restrain the public body from utilizing the violative procedure in the future. *Esperance, supra* at 464. Granting injunctive relief is within the sound discretion of the trial court. *Wilkins v Gagliardi,* 219 Mich App 260, 276; 556 NW2d 171 (1996). Injunctive relief is an extraordinary remedy that issues only

when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury. *Kernen v Homestead Development Co,* 232 Mich App 503, 509; 591 NW2d 369 (1998); *Wilkins, supra* at 276. Where the record fails to indicate that the public body acted in bad faith, there is no real and imminent danger or irreparable injury requiring issuance of an injunction. *Esperance, supra* at 464-465. Thus, where the alleged OMA violations have been addressed and no similar incidents have occurred, it can be concluded that no real and imminent danger exists. *Wilkins, supra* at 276. "In those circumstances, it is appropriate to refrain from imposing a permanent injunction." *Id.* See also, *Schmiedicke v Clare School Bd,* 228 Mich App 259, 267; 577 NW2d 706 (1998), in which this Court affirmed the trial court's denial of an injunction to ensure the defendant's future compliance with the OMA, when "there was no reason to believe" the defendants would deliberately fail to comply with the OMA.

Here, without determining whether the township violated the OMA, we conclude that it properly reenacted the 425 agreement pursuant to the statute. Furthermore, the record fails to show that the township was continuing to act contrary to the OMA. Thus, the trial court did not abuse its discretion in refusing plaintiffs' requested relief.

While the OMA contemplates and provides that a party may be entitled to court costs and actual attorney fees under certain circumstances, MCL 15.271(4); MSA 4.1800(21)(4), even if there is an admitted violation of the OMA, plaintiffs must obtain "relief in the action" to be awarded these sanctions. *Felice v Cheboygan Zoning Comm,* 103 Mich App 742, 745-746; 304 NW2d 1 (1981). In the present case, plaintiffs failed to obtain *any* relief in their action. Thus, they were not entitled to the award of costs and attorney fees.

Next, plaintiffs contend that the trial court prematurely granted defendants' motion for summary disposition because discovery had not yet been completed. We disagree. As a general rule, summary disposition is premature if granted before discovery on a disputed issue is complete. *State Treasurer v Sheko,* 218 Mich App 185, 190; 553 NW2d 654 (1996). Nevertheless, summary disposition may be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Hasselbach v TG Canton, Inc,* 209 Mich App 475, 482; 531 NW2d 715 (1994). Here, we conclude that any further discovery would have been futile. The township cured any alleged violations of the OMA by properly reenacting the 425 agreement thus precluding invalidation. Because plaintiffs were seeking additional discovery of events that occurred prior to the township's reenactment, any additional evidence discovered by plaintiffs would not have resulted in a different outcome. Moreover, our review of the record fails to show that the township was continuing to engage in conduct violative of the OMA after it reenacted the 425 agreement. Thus, the additional discovery sought by plaintiffs would not have aided in obtaining injunctive relief.

Finally, while plaintiffs contend that the trial court erred in permitting Jackson National and the city to intervene in this case, they failed to provide this Court with any authority supporting this contention. This Court will not search for authority to sustain a party's position. *Schellenberg v Rochester Michigan Lodge No 2225, of Benev & Protective Order of Elks of*

USA, 228 Mich App 20, 49; 577 NW2d 163 (1998). "Where a party fails to cite any supporting legal authority for its position, the issue is effectively abandoned." *Id.*

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski
/s/ Jeffrey G. Collins

[1] 1984 PA 425 enables two local units of government to conditionally transfer property by written agreement for the purpose of economic development projects. See MCL 124.21 et *seq.*; MSA 5.4087(21) *et seq*.

[2] The OMA provides for certain exceptions to the necessity to conduct deliberations at a public meeting, none of which are applicable in this case. See MCL 15.263 (7)-(11); MSA 4.1800(13)(7)-(11); MCL 15.267; MSA 4.1800(17); and MCL 15.268; MSA 4.1800(18).