

STATE OF MICHIGAN
COURT OF APPEALS

RONALD BACON,

Plaintiff-Appellee,

v

THE LEONA GROUP, LLC,

Defendant-Appellant,

and

WALTER FRENCH ACADEMY and WALTER
FRENCH ACADEMY BOARD OF DIRECTORS,

Defendants.

UNPUBLISHED

August 4, 2000

No. 219900

Ingham Circuit Court

LC No. 98-088568-CZ

Before: Fitzgerald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant The Leona Group, LLC (TLG) appeals by leave granted from the trial court's order granting plaintiff's motion to amend his complaint and for permissive joinder of TLG as a party defendant in this action under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.* We affirm the court's decision permitting joinder.

I

Plaintiff, an employee of the Michigan Education Association, filed the instant action against defendants Walter French Academy ("the Academy"), a public school academy, and Walter French Academy Board of Directors following the denial of plaintiff's request for public documents pursuant to the FOIA.¹ Although the Academy is required to comply with the FOIA by law, MCL 380.503(6)(b);

¹ Plaintiff sought documents related to the Academy's contracts with its professional staff, including the terms and conditions of their employment, names and addresses, and retirement contributions to the Michigan Public School Employee Retirement System. Plaintiff's request was directed to the Academy

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MSA 15.4503(6)(b), plaintiff's request was denied on the basis that the Academy was not the repository of the requested documents, which were maintained by TLG, a private company, contracted to administer the Academy.² By its own admission, TLG is an independent contractor "in the business of managing public school academies," managing academies in Michigan and Arizona."³

After the instant action was initiated, during discovery, plaintiff made a subsequent FOIA request to both the Academy and TLG. This request was denied, again on the basis that the requested documents were held by TLG, a private entity, which was not subject to the FOIA. Plaintiff then filed a motion to amend his complaint and for permissive joinder of TLG as a party defendant in the circuit court action. Plaintiff contended that the requested documents were public documents related to the exercise of a publicly paid governmental function (operation of a public school academy) and that one of the two entities, the Academy or TLG, should be required to provide the information. The trial court granted plaintiff's motion, concluding that a public body cannot so easily evade the FOIA.

II

We review a trial court's decision with regard to permissive joinder of a party, MCR 2.206(A), for abuse of discretion. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95, 97-98; 535 NW2d 529 (1995). See also *Gervais v Annapolis Homes, Inc*, 377 Mich 674, 679-680; 142 NW2d 7 (1966). An abuse of discretion exists when the court's decision is so violative of fact and logic as to constitute a perversity of will or a defiance of judgment. *Messenger v Ingham County Prosecutor*, 232 Mich App 633, 647; 591 NW2d 393 (1998).

III

Michigan's court rule for permissive joinder of parties, MCR 2.206, provides alternative tests for permissive joinder. Under MCR 2.206(A)(2):

All persons may be joined in one action as defendants

(a) if there is asserted against them jointly, severally, or in the alternative, a right to relief in respect of or arising out of the same transaction, occurrence, or series of

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administrator, Miriam Snyder, who responded by letter that she did not have possession of the documents, nor did she have the authority from the Board to respond to plaintiff's request, but that, as a courtesy, she had forwarded plaintiff's letter to a member of the Board. Further, she was "not even an employee of the academy."

² The Academy partially responded to the FOIA request by providing a copy of the contract between the Academy and Central Michigan University.

³ According to the affidavit of the chief operating officer, TLG is a privately owned, for profit limited liability company, which manages sixteen public academies in Michigan, including Walter French Academy.

transactions or occurrences and if a question of law or fact common to all of the defendants will arise in the action; or

(b) if their presence in the action will promote the convenient administration of justice.

MCR 2.206 is substantially the same as the former court rule, GRC 1963, 206, and “contemplates maximum flexibility in the joinder of parties.” 1 Dean & Longhofer, Michigan Court Rules Practice (4th ed), §§ 2206.1-2206.2, p 105. Michigan’s rule is more liberal than the corresponding federal rule, Federal Rule of Civil Procedure 20, in that a court may grant joinder if it “will promote the convenient administration of justice.” MCR 2.206(A)(1)(b) and (2)(b); 1 Dean & Longhofer, *supra* at § 2206.2, p 106; *Gervais, supra* at 679. Permissive joinder is allowed provided no prejudice will result to any party. *Id.*

Our courts have recognized the broad reach of the convenient administration of justice standard. In a class action suit by jail inmates seeking equitable relief from jail conditions, the Supreme Court upheld the permissive joinder of the county treasurer on the ground that he would be obliged in his official capacity to pay the amounts determined to be owing by other defendants as county officers. *Wayne County Jail Inmates v Lucas*, 391 Mich 359, 362, 368-369; 216 NW2d 910. “The joinder provisions [] are intended to authorize and provide for the joinder of whatever parties are necessary to effecting complete disposition of the claim and the convenient administration of justice.” *Id.* at 368. However, a court is not obligated to permit joinder of a defendant where the plaintiff has not shown a connection to the claim against the original defendant. See *Sabourin v Sabourin*, 67 Mich App 100, 104-105; 240 NW2d 284 (1976) (the court was not obligated to permit joinder of the plaintiff husband’s niece to examine her bank accounts in a divorce action where there was no allegation that the husband conspired with his niece to conceal assets).

In the instant case, we find no abuse of discretion in permitting joinder of TLG as a party defendant. A public school academy is a “public school” under § 2 of article VIII of the state constitution of 1963, receives public funding, and is a governmental agency. MCL 380.501(1); MSA 15.4501(1). In keeping with this public status, the law imposes certain requirements in the operation of a public school academy. “Except as otherwise provided by law, a public school academy shall use certificated teachers according to state board rule.” MCL 380.505(1); MSA 15.4505(1). “A contract issued to organize and administer a public school academy shall contain ... [a] description of the method to be used to monitor the public school academy's compliance with applicable law and its performance in meeting its targeted educational objectives.” MCL 380.503(5)(b); MSA 15.4503(5)(b). “A public school academy shall comply with all applicable law, including ... [t]he open meetings act, [1976 PA 267] ... [and] [t]he freedom of information act, [1976 PA 442].” MCL 380.503(6)(a) and (b); MSA 15.4503(6)(a) and (b).

The Legislature has expressly deemed that a public school academy’s operation is subject to public scrutiny as are other public bodies under the FOIA. MCL 380.503(6)(b); MSA 15.4503(6)(b). Given the Legislature’s express pronouncement, the trial court’s decision to permit joinder of TLG, is not so violative of fact and logic as to constitute a perversity of will or a defiance of judgment.

Under the FOIA, it is the public policy of this state that all persons, except certain persons incarcerated in correctional facilities, are entitled to complete information regarding the affairs of government and the official acts of those who represent them so that they may fully participate in the democratic process. MCL 15.231(2); MSA 4.1801(1)(2), *Swickard v Wayne County Medical Examiner*, 438 Mich 536, 543-544; 475 NW2d 304 (1991). The FOIA is construed liberally to enforce its stated objective. *Walloon Lake Water System, Inc v Melrose Twp*, 163 Mich App 726, 730, 732; 415 NW2d 292 (1987). A public record is defined under the FOIA, MCL 15.232(e); MSA 4.1801(2)(e), as:

a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.

Thus, the FOIA requires disclosure of a public record “used” by a public body. *Favors v Dep’t of Corrections*, 192 Mich App 131, 134-135; 480 NW2d 604 (1991); *Walloon Lake Water System, supra* at 729-730.

In construing a statute, a court may consider a variety of factors and apply principles of statutory construction, but should not ignore common sense. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). Common sense dictates that the mere fact that a public body subcontracts or delegates its essential public purpose, MCL 380.501(1); MSA 15.4501(1), to a private company, should not preclude the public’s right to existing records used directly or indirectly in carrying out its governmental function, on the ground that the public body is not the “repository” of the records. We therefore conclude that the trial court did not abuse its discretion in permitting joinder of TLG as a party defendant.

How and to what extent the documents sought by plaintiff may be obtained through any particular defendant has not yet been determined by the trial court. Contrary to TLG’s argument, we do not conclude that in permitting joinder of TLG as a party defendant, the trial court ruled that TLG is a “public body” and therefore subject to the FOIA on that basis. The parties’ arguments regarding this and remaining issues are properly addressed to the trial court before review by this Court. *Gervais, supra* at 680.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff
/s/ Michael R. Smolenski