

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP SOLOM,

Plaintiff-Appellant,

v

DICKINSON COUNTY LIBRARY BOARD,
WILLIAM CUMMINGS, SUSAN KHOURY,
CATHY CAROBINI, WILLIAM BELDING, and
RENEE AUGUSTINE,

Defendants-Appellees.

UNPUBLISHED

June 14, 2002

No. 235062

Dickinson Circuit Court

LC No. 00-011420-CZ

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's judgment of no cause of action following a bench trial on plaintiff's claim that defendants held a secret meeting in violation of the Open Meetings Act (OMA), MCL 15.261 *et seq.* Plaintiff also appeals the circuit court's earlier order granting partial summary disposition for defendants pursuant to MCR 2.116(C)(10) concerning plaintiff's claim that defendants had conducted secret personnel interviews in violation of the OMA. We affirm in part and reverse in part.

Plaintiff first alleges that private telephone interviews conducted by defendants' personnel committee violated the OMA. We agree. This Court reviews decisions on motions for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1998). All interviews by a public body for employment or appointment to a public office shall be held in an open meeting.¹ MCL 15.268(f); *Herald Co v Bay City*, 463 Mich 111, 128; 614 NW2d 873 (2000). In the present case, defendants alleged that this provision of the act was not violated because the personnel committee, that did not constitute a quorum of the board, merely recorded prepared questions and answers by the applicants. The tapes of these interviews were then given to board members. However, the interviews were never played at an open session. The purpose of the OMA is to promote governmental accountability by facilitating public access to official decision-making and to provide the means through which the general public may understand

¹ Defendant board does not dispute that it constitutes a public body for purposes of the act and that the position is for public office. Accordingly, we need not address the statutory terms.

issues and decisions of public concern. *Manning v City of East Tawas*, 234 Mich App 244, 250; 593 NW2d 649 (1999) citing *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 223; 507 NW2d 422 (1993). Consequently, the OMA is construed broadly, in favor of openness, and exceptions are construed narrowly with the defendant bearing the burden of proving the applicability of an exemption. *Id.* The primary goal of statutory interpretation is to give effect to the intent of the Legislature by reviewing the plain language of the statute itself. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999). Based on the plain language of the statute, the mere recording of the interviews without presentation of the interviews in open session did not comport with the OMA. *Id.* The trial court erred in granting defendants' motion for summary disposition. However, the trial court did not address whether any subsequent amendment to the process by the board satisfied the statutory requirements and any appropriate remedy. See *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525, 534-536; 609 NW2d 574 (2000).

Plaintiff next alleges that defendants conducted an illegal meeting on September 27, 2000, following a regularly scheduled meeting during which a quorum was present and business was discussed. We disagree. We review the trial court's findings of fact in a bench trial for clear error and review de novo the court's conclusions of law. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). Appellate courts give deference to the trial court's superior ability to judge the credibility of the witnesses who appeared before it. *Rellinger v Bremmeyr*, 180 Mich App 661, 665; 448 NW2d 49 (1989).

Plaintiff testified that a quorum of the board remained after a meeting and discussed financial matters and an invitation to William Marchetti to speak at a board meeting. However, the remaining board members testified that innocent conversation occurred following the meeting and Marchetti had been invited to speak to the board prior to the meeting. A board member testified that he was aware of plaintiff's presence outside the meeting room door, but he did not stop the conversation or alert the other board members to plaintiff's presence because there was no reason to do so. Where a quorum of a board is present, but does not deliberate or render a decision, the OMA is not violated. *Ryant v Cleveland Twp*, 239 Mich App 430, 435-436; 608 NW2d 101 (2000). After hearing the testimony of all of the witnesses, the trial court concluded that there was no deliberation by a quorum of remaining board members. Giving deference to the trial court's assessment of the credibility of the witnesses, *Rellinger, supra*, we cannot conclude that the trial court's determination was clearly erroneous. *Chapdelaine, supra*.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Harold Hood
/s/ David H. Sawyer