STATE OF MICHIGAN

COURT OF APPEALS

UNIVERSITY OF DETROIT MERCY, DIRECTOR OF UNIVERSITY OF DETROIT PUBLIC SAFETY DEPARTMENT, and ASSOCIATE VICE PRESIDENT OF FACILITIES MANAGEMENT OF UNIVERSITY OF DETROIT,

Plaintiffs-Appellees,

v

DEPARTMENT OF STATE POLICE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS,

Defendant-Appellant.

UNPUBLISHED
March 6, 2007

No. 266311
Ingham Circuit Court
LC No. 04-000883-AZ

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Defendant Michigan Commission on Law Enforcement Standards (MCOLES) appeals by leave granted from an order denying its motion for summary disposition; granting summary disposition to plaintiffs, University of Detroit Mercy (UDM), its Director of Public Safety, and its Associate Vice President of Facility Management; and permanently enjoining MCOLES from ceasing to recognize the certification status or eligibility of all UDM Public Safety Department public safety officers under the Commission on Law Enforcement Standards Act (CLESA), MCL 28.601 *et seq*. We reverse.

MCOLES is a division within the Department of State Police that is charged under the CLESA with promoting public safety through promulgating rules to establish minimum law enforcement standards and through certifying individuals as police officers; it is also responsible for administering training funds for law enforcement personnel. *Id*. Under the CLESA, a regularly employed person employed on or after January 1, 1977, as a member of a police force is generally not empowered to exercise all of the authority of a peace officer unless that person has been granted certification by MCOLES. MCL 28.609(5). MCOLES is required to grant certification "to a person who meets the law enforcement officer minimum standards at the time he or she is employed as a law enforcement officer." MCL 28.609a(1).

At issue in this case is whether MCOLES is required to grant law enforcement certification to employees of plaintiff UDM's Public Safety Department pursuant to the CLESA, as amended by 2004 PA 379. Specifically, the issue is whether such an employee constitutes a police or law enforcement officer as defined by amended MCL 28.602(l)(i) ("[a] regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law . . ."). The trial court held that UDM's public safety officers were included within this definition and that, therefore, they were entitled to continued certification by MCOLES as law enforcement officers. We disagree. We conclude that the trial court's interpretation of MCL 28.602(l)(i) was erroneous and that the court erred in denying MCOLES's motion for summary disposition and in granting a permanent injunction to plaintiffs.

We review de novo a grant or denial of summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Moreover, this appeal involves an issue of statutory construction, which is also reviewed de novo. See *Grimes v Michigan Dep't of Trans*, 475 Mich 72, 93; 715 NW2d 275 (2006). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Township of Casco v Sec'y of State*, 472 Mich 566, 571; 701 NW2d 102 (2005). Clear and unambiguous statutory language must be accorded its plain meaning and is enforced as written. *Ayar v Foodland Distributors*, 472 Mich 713, 716; 698 NW2d 875 (2005). Finally, a trial court's decision to grant or deny injunctive relief is reviewed for an abuse of discretion. *Michigan State AFL-CIO v Sec'y of State*, 230 Mich App 1, 14; 583 NW2d 701 (1998).

Revised MCL 28.602(l)(i) provides that a "police officer" or "law enforcement officer" includes

> [a] *regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law*, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. Police officer or law enforcement officer does not include a person serving solely because he or she occupies any other office or position. [MCL 28.602(l)(i) (emphasis added).]

The trial court held that, by virtue of a 2001 Letter of Understanding[1] between the Detroit Police Department (DPD) and UDM, UDM's public safety officers were essentially DPD officers and thus were "member(s)" of a law enforcement agency. With respect to the requirement that the officers be "regularly employed," the trial court held that it simply made no difference whether the public safety officers were *paid* by the DPD or by UDM; the court concluded that they remained members of the DPD force notwithstanding the fact that they were employed by UDM.

The court's conclusions were erroneous. First, the court erred in concluding that the Letter of Understanding remains in effect. Detroit City Charter § 7-1117, which ostensibly provides the legal basis for the agreement outlined in the Letter of Understanding, requires the

[1] The Letter of Understanding indicated that the Detroit Police Department would commission UDM public safety officers as police officers.

"*annual application*" of a private institution and a showing of a sufficient necessity to appoint DPD officers to serve at an educational institution. No such annual application has been submitted since before the execution of the 2001 Letter of Understanding. Furthermore, the Letter of Understanding itself provided, in part, as follows:

> This Letter of Understanding *shall be automatically renewed for additional periods of one year upon application and showing of sufficient necessity by University of Detroit Mercy*. Notice of intent to terminate this Letter of Understanding may be provided by either party by certified mail thirty days prior to the date of termination. Specifically, this Letter of Understanding shall expire on June 8, 2002. [Emphasis added.]

As is readily apparent, the Letter of Understanding, although in fact renewable, was only renewable "*upon application and showing of sufficient necessity*" by UDM; moreover, in the absence of the provision of a "[n]otice of intent to terminate," the Letter of Understanding would "expire on June 8, 2002." The trial court ignored the application and showing of necessity requirements, as well as the explicit expiration date, and ruled that the Letter of Understanding automatically continued in force, apparently ad infinitum, until the sitting Chief of Police provided the prescribed notice of intent to terminate. Moreover, the trial court disregarded the fact that the Chief of Police – by whose authority the Letter of Understanding ostensibly existed in the first instance – had, in a December 2004 letter to UDM's president, expressly disavowed the DPD's ability to recognize UDM officers as law enforcement officers.

Additionally, the trial court eviscerated the plain requirements of MCL 28.602(l)(i) by separating the modifying phrase "regularly employed" from the word "member." Even if the Letter of Understanding remained in effect, and even if, as the trial court held, UDM's officers may properly be considered "members" of the DPD by virtue of that agreement, the statute requires that those officers be "regularly employed member[s]" of a qualifying law enforcement agency. Thus, the plain and unambiguous terms of the statute require not only that the officer be a "member" of the subject law enforcement agency, but also that the officer be "employed" *by that agency*. UDM's officers are not employed by the DPD.

Plaintiffs attempt to satisfy the "employment" requirement by contending that the qualifying "law enforcement agency" is not, as the trial court held, the DPD, but is UDM's Public Safety Department itself. However, in recognition of the additional requirement that the law enforcement agency be "authorized and established pursuant to law" – which the Public Safety Department is not – plaintiffs are forced to offer the strained and untenable assertion that the term "agency" is used not in the sense of a unit or division of a governmental body or other organization, but in the sense of an agency *relationship* between a principal and an agent. Applying this construction, plaintiffs contend that the UDM officers are "agents" of the DPD, which is "authorized and established pursuant to law."

Plaintiffs' proffered analysis is without merit. First, it requires the factual existence of an agency relationship, which is problematic in light of the expired Letter of Understanding and DPD's repudiation, by way of a letter to UDM's president, of the existence of such a relationship. Second, MCL 28.602(l)(i) clearly employs the term "law enforcement agency" in the sense of an *organization* and not in the sense of an agency relationship. Our Supreme Court recently addressed a similar issue in *Breighner v Michigan High School Athletic Ass'n, Inc*, 471

Mich 217, 231-232; 683 NW2d 639 (2004), in which the plaintiffs contended that the word "agency" in the definition of "public body" in MCL 15.232(d)(iii), a provision of the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, referred to *agents* of enumerated governmental entities rather than to units or divisions of those governmental entities. Noting that statutory terms are to be construed in accordance with the surrounding text and the statutory scheme, the Court rejected the plaintiffs' proposed construction:

> [I]t is wholly evident from the context of § 232(d)(iii) that this is not the sense in which that term is used. Section 232(d)(iii) designates several distinct governmental units as public bodies, and proceeds to include in this definition any "agency" of such a governmental unit. In this specific context, the word "agency" clearly refers to a unit or division of government and not to the relationship between a principal and an agent. Had the Legislature intended any "agent" of the enumerated governmental entities to qualify under § 232(d)(iii), it would have used that term rather than "agency." [*Breighner, supra* at 232-233.]

The *Breighner* Court additionally noted that it would "defy logic (as well as the plain language of § 232[d][iii]) to conclude that the Legislature intended that any person or entity qualifying as an 'agent' of one of the enumerated governmental bodies would be considered a 'public body' for purposes of the FOIA." *Id*. at 233 n 6.

Similarly, it is evident from the context of MCL 28.602(l)(i) that the term "law enforcement agency" refers to an organization supplying law enforcement services rather than to an agreement contemplating the provision of those services by an agent. A "law enforcement agency" is commonly understood to be an organization supplying police services, such as a city's police force or the Federal Bureau of Investigation. Moreover, the statute refers to a "member" of an agency. Plaintiffs provide no explanation as to how one can be a "member" of a law enforcement "relationship." In short, plaintiffs' construction defies common sense and ignores the plain and common meaning of the terms of the statute.[2]

Moreover, plaintiffs' analysis is untenable in light of the statutory reference to a "law enforcement agency authorized and established pursuant to law" in MCL 28.602(l)(i). The phrase "authorized and established pursuant to law" modifies the term "law enforcement agency"; thus, the agency must be one that is authorized and established pursuant to law. Plaintiffs submit that the agency relationship between UDM and the DPD is authorized and established pursuant to the Home Rule City Act, MCL 117.1 *et seq*., which authorizes the City to "expend funds or enter into contracts with a private organization," see MCL 117.3(j), and pursuant to § 7-1117 of the Detroit City Charter, which authorizes the Chief of Police to appoint police officers to do duty at an educational institution. However, nothing in either of the cited sources *establishes* an agency relationship between the DPD and UDM. At best, those sources

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[2] Additionally, it would countermand logic and the plain meaning of MCL 28.602(l)(i) to conclude that the Legislature intended that every agent of a police organization, such as an informant or other civilian acting in an agency capacity, be certified as a police officer or law enforcement officer. See *Breighner, supra* at 233 n 6.

permit appointment of police officers on UDM's campus; they fall well short of *creating* such an appointment. Furthermore, as noted *supra*, § 7-1117 of the Charter does not even apply under these facts, because no "annual application" has been submitted.

In sum, the trial court erred in concluding that the UDM officers fall within the purview of MCL 28.602(l)(i). It erred in granting summary disposition to plaintiffs, and it additionally erred in issuing a permanent injunction prohibiting MCOLES from adhering to the requirements of the CLESA. A permanent injunction 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). In deciding whether injunctive relief is appropriate, the trial court generally must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and make a decision in accordance with justice and equity under all the circumstances of the case. *Id.* at 514. When the trial court's ruling prevents MCOLES from performing its statutory obligations and requires it to act in direct contravention of those obligations, it cannot be said that the decision comports with notions of justice and equity.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Alton T. Davis