

STATE OF MICHIGAN
COURT OF APPEALS

DAVID E. BLOCH,

Plaintiff-Appellant,

v

DAVISON COMMUNITY SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

July 29, 2010

No. 290709

Genesee Circuit Court

LC No. 08-089820-CZ

Before: SHAPIRO, P.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Plaintiff, David Bloch, appeals the trial court's grant of summary disposition to defendant, Davison Community Schools. For the reasons set forth below, we affirm.

In the spring of 2008, plaintiff made requests for numerous documents from defendant under the Freedom of Information Act (FOIA), MCL 15.231, *et seq.*¹ Among other documents, plaintiff asked for copies of four reports someone at Davison Central Elementary School made to Child Protective Services (CPS) about alleged sexual abuse by plaintiff involving his daughter,

¹ Plaintiff requested the personnel file for the principal of Davison Central Elementary School, job descriptions and information about the qualifications for the positions of principal and counselor in the Davison schools, guidelines for counselors and teachers for reporting child abuse, reports to Child Protective Services about plaintiff's alleged abuse of his daughter and any meeting notes, letters, statements and notes from telephone conversations about plaintiff's alleged abuse. Plaintiff also asked for information on state certification requirements for elementary school guidance counselors. The record reflects that, except for the reports drafted for CPS, defendant fully complied with plaintiff's FOIA request and sent plaintiff personnel records, information about job descriptions and qualifications, reporting requirements, as well as reports, notes and letters about the alleged child abuse. Indeed, the only documents that were withheld or redacted were four one-page reports made by an employee of the defendant school district directly to CPS. The record also reflects that plaintiff obtained numerous documents directly from CPS concerning the child abuse allegations and investigations that followed the reports from the defendant school district. We also note that plaintiff has another case pending in this Court in which he is seeking damages for allegedly false accusations of child abuse that his ex-wife made during their rancorous divorce.

who was enrolled as a second-grader at the school. Defendant's FOIA officer declined to give plaintiff the reports sent to CPS, citing the Child Protection Law (CPL), MCL 722.625, and an exemption under FOIA, MCL 15.243(1)(b)(iv). Plaintiff appealed the decision to defendant's superintendent, who ultimately sent plaintiff the documents, but redacted all of the text from each one. Thereafter, plaintiff filed a complaint and asked the court to order defendant to disclose his requested documents.

Defendant filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10) and argued that plaintiff may not have the reports defendant's employee sent to CPS because they are exempt from disclosure under FOIA. Specifically, defendant argued that because the CPL states that the names of mandatory reporters of suspected child abuse must be kept confidential, and because the reports are handwritten and in a narrative form that would identify the reporter, the documents are exempt from disclosure under MCL 15.243(1)(b)(iv). Defendant further asserted that, under MCL 15.243(1)(l) of FOIA, counseling facts or evaluations of a person may not be disclosed "if the individual's identity would be revealed by a disclosure of those facts or evaluation." Because the reports relate to the counseling of a child and contain information that would readily identify plaintiff's daughter, defendant argued that plaintiff, as a member of the public, may not obtain disclosure of the documents. Defendant further argued that disclosing documents that would reveal the identity of a reporter of suspected child abuse would have a chilling effect on those who are required to convey allegations of suspected child abuse to CPS.

In response, plaintiff argued that defendant's employees did not act in good faith when they reported suspected child abuse of his daughter to CPS and that this precludes application of the confidential source exemption under FOIA. He further argued that defendant should have typed the documents and redacted only the information that would reveal the identity of the child and the reporter. Plaintiff emphasized that his requested disclosure would not be to the "public," but would be made privately to him. He also made various factual allegations about the conduct of individual school employees and their relationship with his ex-wife, with whom he was engaged in acrimonious divorce proceedings.

We hold that the trial court correctly granted summary disposition to defendant. Though the trial court did not cite the specific subrule on which it relied in granting defendant's motion, the record indicates that it agreed with defendant's argument, which was based on letters and other documentary evidence outside of the pleadings. Accordingly, we review the decision under MCR 2.116(C)(10). As this Court explained in *Bialick v Megan Mary, Inc*, 286 Mich App 359, 362; 780 NW2d 599 (2009):

This Court reviews a trial court's decision on a motion for summary disposition made under MCR 2.116(C)(10) de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). "Summary disposition is appropriate only if there are no genuine issues of material fact, and 'the moving party is entitled to judgment as a

matter of law.’ ” *Bragan v Symanzik*, 263 Mich App 324, 327-328; 687 NW2d 881 (2004) (citation omitted).

Also, we review a trial court’s legal determination in a FOIA case de novo. *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 471-472; 719 NW2d 19 (2006).

Here, it is undisputed that the person who reported to CPS child abuse allegations made by plaintiff’s daughter was a mandatory reporter under the CPL. The CPL specifically requires that a school teacher or counselor “who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to [CPS].” MCL 722.623(1)(a). Thereafter, “[w]ithin 72 hours after making the oral report, the reporting person shall file a written report as required in this act.” *Id.* The act also specifically provides that “the identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process.” MCL 722.625. There is no evidence to suggest that the person who reported the suspected sexual abuse of plaintiff’s daughter consented to a revelation of his or her identity.

For purposes of plaintiff’s FOIA request, under MCL 15.243(1), a public body may exempt from disclosure “[i]nvestigating records compiled for law enforcement purposes” to the extent the records would “[d]isclose the identity of a confidential source” as well as “information specifically described and exempted from disclosure by statute.” Because the reports were handwritten and in narrative form with various factual references, the trial court agreed with defendant that disclosure would reveal the identity of the person who reported the abuse allegations to CPS, in violation of the clear requirement in the CPL that the identity of the reporter remain confidential. Accordingly, the trial court correctly ruled that there is a particularized justification to deny disclosure. *The Evening News Ass’n v City of Troy*, 417 Mich 481, 503, 516; 339 NW2d 421 (1983). The clear statutory duty to maintain the confidentiality of a reporter of suspected child abuse compels our conclusion that the documents are exempt from disclosure under FOIA. To allow the revelation of a reporter’s identity through a simple FOIA request would not only run afoul of the CPL, it would expose a reporter of suspected child abuse to potential retribution from the alleged perpetrator and would have a significant chilling effect on a reporter’s willingness to alert CPS to information critical to the protection and welfare of the child.

Though plaintiff claims that defendant was required to separate the exempt from the nonexempt material in order to facilitate disclosure, the entire report was exempt because it was handwritten and, contrary to plaintiff’s assertion that defendant should have typed the reports to hide the identity of the reporter, the FOIA “does not require a public body to create a new public record” in order to satisfy a disclosure request. MCL 15.233(5).

We also reject plaintiff’s assertion that, because the reporter did not act in good faith, the confidential source exemption does not apply. Plaintiff is referring to MCL 722.625, which provides that, “[a] person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might

otherwise be incurred by that action.” Plaintiff has not presented evidence that defendant or its employees acted in bad faith but, in any case, the provision referring to the confidential identity of a reporting person does not contain the same “good faith” requirement in the immunity provision.²

Affirmed.

/s/ Douglas B. Shapiro

/s/ Henry William Saad

/s/ Deborah A. Servitto

² We reject plaintiff’s assertion that defendant was required to follow protocols adopted by CPS with regard to disclosure of documents. Plaintiff has not shown that FOIA requires that CPS make disclosure decisions when a request is made to another public body or entity like defendant, a school district. We are also unpersuaded by plaintiff’s allegation that defendant’s employees somehow violated the CPL. Plaintiff’s complaint merely sought disclosure of documents under FOIA, the trial court ruled on that issue, and we limit our analysis to plaintiff’s appeal of that ruling under FOIA.