

STATE OF MICHIGAN
COURT OF APPEALS

NEIL J. HIRSHBERG,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

January 31, 1997

No. 191948

Oakland Circuit Court

LC No. 95-503091

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

On August 2, 1995, plaintiff filed a request with defendant pursuant to the Michigan Freedom of Information Act, MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.* (FOIA), seeking access to "all computer files, magnetic medium and/or computer disks containing the Notice of State Tax Liens recorded or to be recorded in the County Register of Deeds offices for any county in the State of Michigan for the month of June, 1995." Defendant denied plaintiff's request on the ground that the documents sought were exempt from disclosure under MCL 205.28; MSA 7.657(28). On August 25, 1995, plaintiff filed a complaint pursuant to MCL 15.240(1); MSA 4.1801(10)(1) to compel the disclosure of the requested documents.

On October 13, 1995, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that there was no genuine issue of material fact with regard to plaintiff's FOIA lawsuit. The trial court granted defendant's motion, finding that the language of MCL 205.28; MSA 7.657(28) was clear and unambiguous, and that defendant was precluded from releasing any information obtained in the administration of a tax. Therefore, the trial court ruled that the tax lien information plaintiff requested under the FOIA was exempt from disclosure as a matter of law. The

* Circuit judge, sitting on the Court of Appeals by assignment.

court further noted that plaintiff could seek the requested information through the “filing officer” pursuant to the State Tax Registration Act, MCL 211.684; MSA 7.753 (54).

Plaintiff argues on appeal that the trial court erred in holding that MCL 205.28; MSA 7.657(28) clearly and unambiguously forbids disclosure of information obtained in connection with the administration of a tax. We disagree.

This Court reviews de novo the trial court’s grant of summary disposition pursuant to MCR 2.116(C)(10). *Kent County v Home Ins Co*, 217 Mich App 250, 261; 551 NW2d 424 (1996). In ruling on the motion, the trial court must consider the pleadings and any depositions, affidavits, admissions, or other documentary evidence submitted by the parties. The test is whether the kind of record that might be developed, giving the benefit of any reasonable doubt to the nonmoving party, would leave open an issue upon which reasonable minds might differ. *Id.* The burden is on the party opposing the motion to show that a genuine issue of disputed fact exists. *Id.*

The FOIA provides that a person has the right to inspect a public record of a public body, except as expressly exempted. MCL 15.233(1); MSA 4.1801(3)(1). MCL 15.243(1)(d); MSA 4.1801(13)(1)(d) provides:

A public body may exempt from disclosure as a public record under this act records or information specifically described and exempted from disclosure by statute.

Defendant’s justification for denying plaintiff’s request was based on MCL 205.28(1)(f); MSA 7.657(28)(1)(f), which provides:

Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department shall not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department. A person may disclose information described in this subdivision if the disclosure is required for the proper administration of a tax administered under this act, pursuant to a judicial order sought by an agency charged with the duty of enforcing or investigating support obligations pursuant to an order of a court in a domestic relations matter . . . or pursuant to a judicial order sought by an agency of the federal, state, or local government charged with the responsibility for the administration or enforcement of criminal law for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings or a judicial order if the taxpayer’s liability for a tax administered under this act is to be adjudicated by the court that issued the judicial order.

Plaintiff argues that because defendant provides the requested information to the register of deeds pursuant to MCL 211.682(a); MSA 7.753(52)(a), defendant is not entitled to an exemption from disclosure based on MCL 15.243(1)(d); MSA 4.1801(13)(1)(d). We disagree.

When the language of a statute is clear and unambiguous, this Court should not look beyond the ordinary meaning of the statutory language in giving effect to the statute. However, if the statute is ambiguous, this Court must determine and give effect to the intent of the Legislature. *Shellum v Michigan Employment Security Comm'n*, 194 Mich App 474, 477; 487 NW2d 490 (1992). When two statutes cover the same general subject, they must be construed together to give reasonable effect to both, if at all possible. *House Speaker v State Administrative Board*, 441 Mich 547, 568; 495 NW2d 539 (1993). Read together, MCL 15.243(1)(d); MSA 4.1801(13)(1)(d), MCL 205.28(1)(f); MSA 7.657(28)(1)(f), and MCL 211.682(a); MSA 7.753(52)(a), provide that defendant may release the tax lien information to the registers of deeds, as this is necessary for the proper administration of a tax, but the information is otherwise exempt from disclosure under the FOIA. We note that plaintiff may obtain the information from the register of deeds pursuant to MCL 211.684(4); MSA 7.753(54)(4). Consequently, the trial court did not err in granting summary disposition for defendant.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Barbara B. MacKenzie
/s/ Amy Patricia Hathaway