STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH M. HALEY,

Plaintiff-Appellant,

v

STATE ASSESSORS BOARD,

Defendant-Appellee.

UNPUBLISHED
November 22, 2002

Nos. 232804; 233800
Cheboygan Circuit Court
LC No. 98-006496-CZ

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

In Docket No. 232804, plaintiff appeals as of right from a judgment granting plaintiff partial relief on his complaint under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq*., awarding plaintiff statutory costs and punitive damages of $500, and ordering plaintiff to pay defendant $420 as a sanction for prematurely filing an application for default judgment. In Docket No. 233800, plaintiff appeals as of right from a post-judgment order awarding him statutory costs of $300. We affirm.

I

The premise underlying plaintiff's appeals is his mistaken belief that he was the "prevailing party" in this action, as defined by MCR 2.625, and therefore is entitled to any statutory cost he actually incurred. To determine whether a party has prevailed in an FOIA action for purposes of an award under MCL 15.240(4), we look to whether prosecution of the action was necessary to, and had a substantial effect on, the delivery of or access to the documents. *Wilson v Eaton Rapids*, 196 Mich App 671, 672; 493 NW2d 433 (1992). This also encompasses lawsuits having a causal effect on the disclosure of the nonexistence of a requested document. *Hartzell v Mayville Community School Dist*, 183 Mich App 782, 789; 455 NW2d 411 (1990). If a plaintiff prevails in part, the trial court has discretion to award "reasonable attorneys' fees, costs, and disbursements" provided by MCL 15.240(6). *Tallman v Cheboygan Area Schools*, 183 Mich App 123, 131; 454 NW2d 171 (1990). Notably, regardless of whether a plaintiff prevails in full or in part, the *reasonableness* of the award is discretionary with the trial court. *Michigan Tax Management Services Co v Warren*, 437 Mich 506, 509-510; 473 NW2d 263 (1991).

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

In the case at bar, the trial court dismissed plaintiff's claims arising out of his letters dated June 9, 11, and 18, 1998, and only found FOIA violations in seven of the eleven items plaintiff requested in his November 6, 1999, letter. Because we agree with the trial court's findings, we agree with its conclusion that plaintiff only partially prevailed on his complaint for relief under the FOIA. We review the trial court's decision de novo. *Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). Although the trial court did not specify whether it decided defendant's motion under MCR 2.116(C)(8) or (10), we will review the court's decision under MCR 2.116(C)(10) because it is apparent that the court looked beyond the pleadings when deciding the motion. *Swan v Wedgewood Youth & Family Services, Inc*, 230 Mich App 190, 194; 583 NW2d 719 (1998).

MCR 2.116(C)(10) tests the factual sufficiency of the complaint to determine if a genuine issue of material fact exists for trial. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). The specific facts setting forth a genuine issue of material fact must be shown at the time the motion for summary disposition is made. *Id.* Even if discovery is incomplete, summary disposition may be proper if further discovery does not stand a fair chance of uncovering factual support for an opposing party's position. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000).

Under the FOIA, a public body must disclose all public records not specifically exempt. MCL 15.233(1); *Scharrett v Berkley*, 249 Mich App 405; 412; 642 NW2d 685 (2002). A person's written request for a public record must sufficiently describe the public record so as to enable the public body to find it. MCL 15.233(1); *Kincaid v Dep't of Corrections*, 180 Mich App 176, 182; 446 NW2d 604 (1989). The Legislature did not impose detailed or technical requirements, but rather "required that any request be sufficiently descriptive to allow the pubic body to find public records containing the information sought." *Herald Co, supra* at 121. Because the focus is on the access provided, we will address whether plaintiff's request letters demonstrate a basis for accessing records other than those that defendant has already produced or was ordered to produce by the trial court. Once records are produced, the substance of the controversy disappears and becomes moot. *Densmore v Dep't of Corrections*, 203 Mich App 363, 366; 512 NW2d 72 (1994).

We are not persuaded that plaintiff's June 9 letter was sufficiently specific to enable defendant to find the requested public records, apart from the minutes for the May 22, 1998, open meeting, which defendant provided. Defendant was not required in this case to create a new public record or to make a compilation, summary or report of information. See MCL 15.233(4) and (5); MCL 15.241. Arguably, defendant could have indicated with greater specificity in its response that it was providing only the minutes because the description was insufficient to look for other existing records, *Kincaid, supra* at 182, and it should have denied the existence of the audiotape sought in the letter, *Hartzell, supra* at 787. However, even if the June 9 letter were viewed as containing a sufficient description to enable defendant to provide records other than the minutes of the May 22, 1998, open meeting, we deem any error harmless insofar as it relates to the grant of summary disposition in defendant's favor on this issue. MCR 2.613(A). Defendant produced properly requested records during the course of the litigation and was ordered to produce records as a result of the more detailed information in plaintiff's

November 6 letter;[1] we therefore hold that plaintiff has not shown any error having a causative effect on his access to documents. *Swickard v Wayne Co Medical Examiner*, 196 Mich App 98, 103; 492 NW2d 497 (1992).

With regard to plaintiff's June 11 letter, we conclude that the trial court properly granted summary disposition in defendant's favor on the ground that the letter sought information of a legal nature regarding plaintiff's rights and failed to identify a public record held by defendant that could be given to plaintiff. Plaintiff's request in this case required both legal research and legal advice in order to answer defendant's questions about his rights. The FOIA does not require a public body to answer questions. Cf. *DiViacio v Kelley*, 571 F2d 538 (CA 10, 1978) (federal FOIA does not require answers to interrogatories, but rather the disclosure of non-exempt documentary materials); *Hudgins v Internal Revenue Service*, 620 F Supp 19, 21-22 (D DC, 1985), aff'd 880 F2d 137 (1987) (federal FOIA does not require answers to questions disguised as an FOIA request or services such as legal research). See also *Densmore*, *supra* at 365 (federal FOIA may be considered in construing the Michigan FOIA).

Regarding plaintiff's June 18 letter, we likewise uphold the trial court's grant of summary disposition because the "information" sought by plaintiff was in the nature of statutes and rules.[2] Contrary to plaintiff's argument on appeal, this letter does not request records under MCL 15.241(1), but rather, requests legal research into "any" statutes or rules that could answer queries on such alleged conduct as defendant acting contrary to the Open Meetings Act (OMA), MCL 15.261 *et seq.* Reasonably read, the request was simply an attempt to have questions answered and research performed. Because it does not describe or request a public record, we hold that the letter had no causative effect on plaintiff's access to documents. Since it had no effect on plaintiff's access to documents, we hold that plaintiff has not demonstrated a basis for relief. *Swickard, supra.*

Plaintiff asserts in his brief that "a party will 'prevail' in an action when the defendant clearly violates the FOIA." However, while plaintiff did prevail on some of his claims, he did not prevail on the entire record and cannot be said to have prevailed *in the action*. Thus, we find plaintiff only prevailed in part and was not entitled to recover all his costs incurred in bringing this action.

---

[1] Because plaintiff does not address the trial court's ruling with regard to the November 6 letter, we do not address it separately. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998). We note, however, that plaintiff is incorrect to the extent he suggests that he prevailed as to each item requested in the November 6 letter. Not all eleven items in the November 6 letter had an effect on the disclosure of documents or the disclosure of the nonexistence of documents. For instance, the "evidence and facts" sought in item ten was dismissed by the trial court because it was insufficient to identify an existing document.

[2] We note that the trial court did not grant summary disposition with regard to certain notice information sought in the June 18 letter, but later indicated, when rendering its decision based on stipulated facts, that the notices did not exist. Because plaintiff has not addressed the trial court's ruling regarding the notice information, we need not address that issue. *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 13; 413 NW2d 744 (1987).

II

Plaintiff also claims that the trial court erred by denying his request for disbursements and attorney fees after having allowed him statutory costs and punitive damages. Plaintiff asserts that, although he appeared in propria persona in the FOIA action, under MCL 15.240(6) he was entitled to disbursements to compensate him for fees that he paid to an attorney for legal consultation.

We find, as did the trial court, that (1) plaintiff could not recover attorney fees for self-representation in the FOIA action, *Laracey v Financial Institutions Bureau,* 163 Mich App 437, 442; 414 NW2d 909 (1987), and (2) plaintiff failed to set forth any disbursements incurred. The record indicates that plaintiff merely pointed to several of his filings and other documents as evidence that expenses had been incurred. However, there is no indication in the record that plaintiff submitted evidence documenting any actual payments to an attorney for consultation fees in this case, as either recoverable "attorney fees" or "disbursements," despite being afforded a hearing on the judgment before it was entered in January 2001, and later moving for reconsideration of the judgment. Under these circumstances, we reject plaintiff's claim that the trial court committed an error of law.

III

We next address plaintiff's arguments regarding the trial court's decision to award defendant $420 in sanctioning plaintiff for violating MCR 2.114 by prematurely filing an application for default. We find no record support for plaintiff's claim that defendant withdrew the motion or waived the issue. Rather, the record reflects that defendant withdrew a scheduled hearing on the motion, but later brought the motion to the trial court's attention as part of its motion to dismiss the claims, filed in May 1999. Plaintiff has not established any procedural irregularity in the manner in which the motion was presented to the trial court. Furthermore, given the notice and hearing afforded to plaintiff to address the sanction, due process was satisfied, and any error would have been harmless. MCR 2.613(A). *Rental Properties Owners Ass'n v Grand Rapids,* 455 Mich 246, 271; 566 NW2d 514 (1997).

Further, we are unpersuaded that plaintiff has demonstrated any basis for disturbing the trial court's decision to order a sanction or the amount of the sanction. Although the trial court did not identify which portion of MCR 2.114 was violated**,** it found the application for default was premature; therefore, it was not well grounded in fact. MCR 2.114(D)(2). Further, while we agree with plaintiff's argument that community standards are relevant in determining a reasonable fee, we reject plaintiff's position that public and private attorneys should be necessarily subjected to different standards of reasonableness. *United States v Big D Enterprises, Inc,* 184 F3d 924, 936 (CA 8, 1999). On the basis of the record, we conclude that the court did not abuse its discretion in finding $420 to be a reasonable attorney fee. MCR 2.114(E); *Persichini v William Beaumont Hosp,* 238 Mich App 626, 644; 607 NW2d 100 (1999).

To the extent that plaintiff relies on arguments that were presented in his motion for reconsideration to challenge the sanction, we also find no basis for relief. Plaintiff has not shown that the trial court abused its discretion in denying the motion for reconsideration. *Kokx v Bylenga,* 241 Mich App 655, 658-659; 617 NW2d 368 (2000).

IV

Plaintiff next challenges the trial court's failure to award him sanctions and expenses relative to production of the minutes for the May 22, 1998, closed meeting, which he sought to obtain by means of a request for inspection under MCR 2.310 and a later discovery order that was granted by the trial court on May 5, 2000.

As a preliminary matter, we reject defendant's claim that an appeal from the May 5, 2000, order was required in order to preserve this issue for appeal. "Where a party has claimed an appeal from a final order, the party is free to raise on appeal issues relating to other issues in the case." *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). See also *People v Torres*, 452 Mich 43, 57-59; 549 NW2d 540 (1996). We also reject defendant's claim that plaintiff abandoned this issue by not amending his complaint to add a claim under the OMA. A court speaks through its orders. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 54; 436 NW2d 70 (1989). We find no record evidence that the trial court conditioned discovery or sanctions on plaintiff amending his complaint.

Turning to plaintiff's argument concerning the trial court's failure to order a sanction, we are not convinced that the trial court abused its discretion in denying a discovery sanction. *Traxler v Ford Motor Co*, 227 Mich App 276, 286; 576 NW2d 398 (1998); *Merit Mfg v ITT Higbee*, 204 Mich App 16, 21; 514 NW2d 192 (1994). Although no sanction was ordered, the discovery order directed defendant to disclose the minutes of the May 22, 1998, closed meeting; this afforded plaintiff the same substantive relief that would have resulted had the trial court found that defendant violated the FOIA by not responding to the November 6, 1998, letter. See MCL 15.240(4).

With regard to plaintiff's claim for expenses under MCR 2.313(B) and (D), we again note that the relevant provisions provide for "reasonable" expenses. Further, a trial court may deny an award if it finds that the party's failure to comply with a discovery order was substantially justified or other circumstances make an award unjust. In the case at bar, the trial court did not address expenses until the end of the case when deciding the remaining issues on stipulated facts, the briefs, and the record. At that time, plaintiff was afforded an opportunity to present claims for attorney fees, costs and disbursements in connection with the entire litigation under the FOIA, MCL 15.240(6). The trial court examined the reasonableness of the claimed costs, including plaintiff's claim for motion costs, in post-judgment proceedings. Under these circumstances, we conclude that the trial court's disposition of the various expenses claimed by plaintiff is dispositive of the question of his entitlement to an award for expenses. If plaintiff had specific expenses associated with discovery that he believed were recoverable under MCR 2.313, they should have been brought to the trial court's attention. The failure to follow through on a motion by requesting an answer from the trial court may be deemed an abandonment of the claim. *People v Howard*, 226 Mich App 528, 537; 575 NW2d 16 (1997); *People v Riley*, 88 Mich App 727, 731; 279 NW2d 303 (1979). Hence, under the circumstances of this case, we deem any error stemming from the trial court's failure to specifically address the expense provisions of MCR 2.313 to be harmless. MCR 2.613(A).

V

Next, plaintiff challenges the trial court's post-judgment order allowing only $300 in statutory costs. Plaintiff argues that the trial court lacked the authority to disallow statutory costs that were awarded as part of the judgment. Because the trial court did not rule on the amount of statutory costs that it would allow under the FOIA, MCL 15.240(6), and defendant objected at that time to certain items claimed in plaintiff's bill of costs, we conclude that the trial court was authorized to later consider the reasonableness of the claimed costs. MCR 7.208(I); MCR 2.625(F)(4). The fact that motion, subpoena, and witness fees may all be taxable as costs did not preclude the trial court from determining their reasonableness. Under the relevant provision of the Revised Judicature Act, MCL 600.2405, specified items may be taxed unless otherwise directed. Reading the cost provisions of the RJA in pari materia with the cost provisions in the FOIA, the trial court was authorized to determine the reasonableness of plaintiff's claimed motion fees. See generally *Nemeth v Abonmarche Development, Inc*, 457 Mich 16, 43; 576 NW2d 641 (1998) (charging Legislature with technical meaning of word "costs" in Revised Judicature Act), and *Van Guilder v Collier*, 248 Mich App 633, 638; 650 NW2d 340 (2001) ("statutes that relate to the same subject or that share a common purpose are in pari materia and must be read together as one law, even if they are enacted on different dates").

We also find that the trial court did not abuse its discretion in disallowing fourteen out of the nineteen motion fees claimed by plaintiff. *Michigan Tax Management Services Co, supra* at 509-510. Further, while we agree with plaintiff that the language governing subpoena and witness fees in MCL 600.2559 and 600.2552 does not require that a witness testify, we do not find that the trial court abused its discretion in disallowing these costs. *Id.*

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof