STATE OF MICHIGAN

COURT OF APPEALS

DAVE YOURDAN,

Plaintiff-Appellant,

v

BROWN CITY COMMUNITY SCHOOLS,

Defendant-Appellee.

UNPUBLISHED
October 3, 2006

No. 260419
Sanilac Circuit Court
LC No. 04-029696-CZ

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of no cause of action following a bench trial. Because the record fails to persuade us that the trial court clearly erred in reaching its findings, we affirm.

This case arises out of two alleged violations of the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. Pursuant to the FOIA, plaintiff submitted a record request with defendant seeking access to the minutes of all board meetings, all audits, and complete revenue information concerning defendant's day-care from 1995 to the then present time. Ultimately, plaintiff inspected defendant's public records on three separate occasions. Undisputed testimony provides that, during plaintiff's first record inspection, defendant's employee asked plaintiff to submit a separate, written FOIA request after plaintiff had asked her to make a copy of a document, but plaintiff refused and was later escorted out of the building by a police officer. Plaintiff filed suit alleging a violation of the FOIA shortly thereafter. While litigation was ongoing, the parties agreed to allow plaintiff to again inspect the requested public records, and plaintiff brought a copier for that inspection. During the second inspection, which occurred over three months after the first inspection, plaintiff asked about certain day-care revenue information to which one of defendant's employees responded that, if the information existed, defendant's day-care director was storing it. Shortly after the second inspection, defendant's employee inquired about the day-care information and determined that the information did exist. However, she did not immediately inform plaintiff that the information was found, and the information was first disclosed in a set of interrogatory answers sent to plaintiff about two months after the information was discovered. In a final inspection, plaintiff was able to review the requested day-care information. Following a bench trial, the trial court concluded that defendant did not violate the FOIA.

From the outset we note that defendant's agents, specifically charged with implementation of defendant's FOIA plan, were less than candid in their approach to plaintiff's inquiries. Defendant's agents did little, if anything, to assist plaintiff in his requests for information. However we also note that plaintiff's initial inquiry for records did not encompass some of the information that defendant's agents seemingly withheld. While our displeasure with the lack of professionalism exhibited by defendant through its agents gives us cause for concern, we are bound to review a trial court's findings of fact for clear error. *Meredith Corp v Flint*, 256 Mich App 703, 712; 671 NW2d 101 (2003). Thus, giving the trial court the deference the statute requires, we affirm its rulings.

We begin by reviewing the purpose of FOIA and its application to the facts presented in this matter. Unlike questions of fact, an issue of statutory interpretation is a question of law and is reviewed de novo. *Id.* at 711. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, and the Legislature is presumed to have intended the meaning it plainly expressed. *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, then a court is required to apply the statute as written. *Id.* A court must derive the Legislature's intent from the language of the statute and not from missing language. *AFSCME v Detroit*, 468 Mich 388, 400; 662 NW2d 695 (2003).

The FOIA "was enacted to carry out this state's strong public policy favoring access to government information, recognizing the need for citizens to be informed so that they may fully participate in the democratic process and thereby hold public officials accountable for the manner in which they discharge their duties. MCL 15.231(2)[.]" *Thomas v New Baltimore*, 254 Mich App 196, 201; 657 NW2d 530 (2002). "Pursuant to the FOIA, a public body must disclose all public records not specifically exempt under the act. MCL 15.233(1)[.]" *Scharret v Berkley*, 249 Mich App 405, 411; 642 NW2d 685 (2002). Upon furnishing a sufficiently descriptive, written request, a person has the right to inspect, copy, or receive copies of a public record not exempt from disclosure. MCL 15.233(1). "Unless otherwise agreed to in writing, a public body must respond to a request for a public record within five business days after it receives the request, and the failure to so respond constitutes a final determination to deny the request. MCL 15.235(2) and (3)[.]" *Thomas*, *supra* at 201. Under MCL 15.240(1), after a public body makes a final determination to deny all or a portion of a request, the requesting party may submit a written appeal to the head of the public body or bring a circuit court action within 180 days after the denial to compel disclosure of the requested record.[1] A public body may limit a person's rights under the FOIA by creating reasonable rules to protect public records and to prevent excessive and unreasonable interference with the functions of the public body. MCL 15.233(3).

As to the alleged FOIA violations, plaintiff argues that the trial court clearly erred because defendant violated the FOIA on two separate instances: (1) when defendant's employee requested that plaintiff make a separate, written FOIA request during the first inspection regarding a document that he wanted copied and (2) when defendant failed to disclose that the

[1] Defendant does not allege that plaintiff improperly brought an action in the circuit court.

day-care revenue information including receipt books, deposit slips, and sign-in and sign-out sheets existed after they were discovered sometime following the second inspection.

As to the first alleged violation, we cannot conclude that the trial court clearly erred in finding no FOIA violation occurred when the court reasoned that, while plaintiff broadly requested access to defendant's audits from 1995 to the present, plaintiff did not specifically ask for a copy of a page from the 2000 to 2001 audit report. In relation to the trial court's reasoning, while a person is entitled to a copy of a public record under MCL 15.233(1), we cannot conclude that the trial court clearly erred by finding that it was reasonable for defendant's employee to ask plaintiff to create another FOIA request concerning the specific document he wanted copied. Such a finding eludes a finding of clear error because it was argued that such a request was to ensure that defendant would ultimately comply with plaintiff's request for copies. The fact that plaintiff admitted to making about 125 to 150 copies during the second inspection also supports such a finding. When examining the trial court's findings in conjunction with statute, specifically, MCL 15.233(3), which provides in part that "[a] public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions[,]" the statute clearly allows a public body to set reasonable rules concerning a request for copies during an inspection, which, in this case, included a separate, written FOIA request for copies to be made later. Moreover, while a public body is required to provide a reasonable opportunity to inspect records and to furnish a facility for taking notes or abstracts, MCL 15.233(3), a public body is not required to immediately make copies for a party during an inspection but is allowed a reasonable amount of time to make the requested copies as contemplated under § 3(3). Specifically, under § 3(3), upon receiving a FOIA request, a public body is required to furnish a reasonable facility to take notes but that subsection does not provide that a public body must make copies immediately when asked during an inspection. In this case, while plaintiff had only requested a copy of one document at that time, defendant's employee was not under a statutory duty to stop performing her ordinary tasks[2] that day each time defendant wanted a copy of a document.

As to the second alleged violation, plaintiff does not argue that defendant initially failed to make a good faith effort in searching for the requested records, but rather that defendant should have notified him when the day-care revenue information had been discovered because litigation was pending. However, nothing in the statute requires such a disclosure, and absent factual evidence of bad faith in searching for the documents, we are forced to conclude that the trial court did not clearly err in finding that defendant did not violate the FOIA concerning this alleged violation.

While the FOIA is a prodisclosure statute, *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 482; 691 NW2d 50 (2004), the Legislature did not expressly require a public body to disclose information that was discovered well after a good faith record search pursuant to an

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[2] Defendant's employee testified that while plaintiff was inspecting the records, she was preparing to deposit money into a bank, was answering phones, and had to stay at her desk because she was the only employee in the reception area.

initial FOIA request. Because no such requirement exists, a public body is not required to verify whether documents discovered well after a FOIA request are within the purview of any and all previously submitted FOIA requests because this requirement would unduly burden a public body. While this case is unique because relevant documents were discovered while litigation was ongoing, these factual circumstances do not modify a public body's limited duty to conduct an initial good faith search. After such a search has been conducted, a public body's duty concerning the existence of documents within the purview of a FOIA request is discharged. As a result, because legislative intent is determined from the language itself, *AFSCME*, *supra* at 400, and there is no language in the FOIA to require a public body to disclose that records do in fact exist if discovered well after a good faith search was conducted pursuant to a written FOIA request, the trial court did not clearly err in finding that no violation occurred. The record simply does not support a finding that defendant failed to make an initial good faith search for the requested records. The initial response from defendant's secretary was that they did not believe that a day-care center was being operated in the year in which plaintiff make the request for documents. Furthermore, defendant's secretary informed plaintiff that she had made a telephone call to a fellow employee to verify that information.

Because plaintiff's remaining arguments are premised on the above alleged errors, we need not further consider those arguments.

Affirmed.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello