STATE OF MICHIGAN

COURT OF APPEALS

TIMOTHY ADER, Plaintiff-Appellant,	UNPUBLISHED June 29, 2010
v	No. 290583 Saginaw Circuit Court
DELTA COLLEGE BOARD OF TRUSTEES, Defendant-Appellee.	LC No. 08-001822-CZ

Before: MURRAY, P.J., and SAAD and M.J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals a trial court order that granted summary disposition to defendant. For the reasons set forth below, we affirm.

Plaintiff contends that defendant violated the Open Meetings Act, (OMA), MCL 15.261 *et seq*., at a meeting on June 10, 2008. At the meeting, the board voted to go into closed session to discuss a lawsuit filed by board member Kim Higgs. Plaintiff, Higgs, and others who attended the meeting left the room but, shortly thereafter, Higgs and his attorney, James Johnson, were asked into the closed session. The public was not permitted to reenter the board room. Plaintiff maintains that, during the closed meeting, the board, the board's attorney, Higgs, and Johnson "discussed and negotiated toward a settlement of the lawsuit . . . ." Plaintiff sought a declaratory judgment that the board violated the OMA and he requested an injunction to compel the board to comply with the OMA and to enjoin the board from further noncompliance.

We agree with the trial court that plaintiff lacks standing to maintain this action under the OMA.[1] "'The concept of standing in the context of a legal proceeding means that a party must

[1] The trial court granted summary disposition to defendant pursuant to MCR 2.116(c)(4). "This Court reviews de novo a trial court's decision on a motion for summary disposition." *Duncan v State*, 284 Mich App 246, 260; 774 NW2d 89 (2009). "This Court reviews a trial court's grant of summary disposition pursuant to MCR 2.116(C)(4) 'to determine if the moving party was entitled to judgment as a matter of law, or if affidavits or other proofs demonstrate there is an issue of material fact.'" *Genesis Center, PLC v Financial and Ins Services Com'r*, 246 Mich App 531, 540; 633 NW2d 834 (2001), quoting *Harris v Vernier*, 242 Mich App 306, 309; 617 (continued…)

have suffered an actual, particularized impairment of a *legally protected* interest, that the opposing party can in some way be shown to be responsible for that impairment, and that a favorable decision by a court could likely redress that impairment.'" *Lansing Schools Ed Ass'n, MEA/NEA v Lansing Bd of Ed*, 282 Mich App 165, 172; 772 NW2d 784 (2009), quoting *Walgreen Co v Macomb Twp*, 280 Mich App 58, 62; 760 NW2d 594 (2008) (emphasis in original). Section 11(1) of the OMA states that, "[i]f a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or *a person* may commence a civil action to compel compliance or to enjoin further noncompliance with this act." MCL 15.271 (emphasis added). Plaintiff asserts that, as "a person," he may maintain this action to challenge the board's alleged noncompliance with the OMA. However, "our courts have held that, in almost all cases, if a plaintiff has not met the constitutional minimum criteria for standing, he or she may not proceed on the theory that standing is statutorily conferred . . . ." *Lansing Schools*, 282 Mich App at 171; *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608; 684 NW2d 800 (2004). As the Michigan Supreme Court explained in *Miller v Allstate Ins Co*, 481 Mich 601, 606-607; 751 NW2d 463 (2008):

> Our constitution requires that a plaintiff possess standing before a court can exercise jurisdiction over that plaintiff's claim. *Rohde v Ann Arbor Public Schools*, 479 Mich 336, 346; 737 NW2d 158 (2007). This constitutional standing doctrine is longstanding and stems from the separation of powers in our constitution. *Nat'l Wildlife*[, 471 Mich at 612]. Because the constitution limits the judiciary to the exercise of "judicial power," Const 1963, art 6, § 1, the Legislature encroaches on the separation of powers when it attempts to grant standing to litigants who do not meet constitutional standing requirements.

In *Lee v Macomb Ct Bd of Comm*, 464 Mich 726, 739; 629 NW2d 900 (2001), quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992), the Michigan Supreme Court explained the constitutional standing requirements as follows:

> "First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural" or "hypothetical." ' Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly . . . traceable to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' " [Citations omitted.]

(…continued)

NW2d 764 (2000). As our Supreme Court also explained in *Lee v Macomb Ct Bd of Comm*, 464 Mich 726, 734; 629 NW2d 900 (2001):

> Whether a party has standing is a question of law. This Court reviews questions of law de novo.

Moreover, as the Court explained *Lee*, 464 Mich at 738-739, quoting *House Speaker v Governor*, 441 Mich 547, 554; 495 NW2d 539 (1993), "[s]tanding requires a demonstration that the plaintiff's substantial interest will be detrimentally affected in a manner different from the citizenry at large."

Here, plaintiff cannot establish an "injury in fact." While plaintiff asserts that his injury differs from that of the general public because he attended the main board meeting and was excluded from the closed session, he does not dispute that other members of the public also attended the board meeting and were excluded from the closed session and he does not dispute that the board would not have permitted other members of the public into the meeting. Thus, plaintiff fails to explain how the board's conduct violated an alleged "legally protected interest" personal to him and one that differs "from the citizenry at large." Further, though plaintiff contends that he might have wanted to speak about the Higgs case but was not allowed because he was excluded from the meeting, this is merely hypothetical; nothing in the record indicates that plaintiff planned to speak or expressed an interest in speaking about the settlement. Plaintiff also fails to explain how his requested relief of a declaratory judgment and injunction would redress his injury, particularly in light of the undisputed fact that the meeting about which he complains involved a case in which he was not involved and that has since been settled.[2]

Plaintiff concedes that *Lee* and *Nat'l Wildlife* establish a set of constitutional standing requirements that he does not necessarily meet, but he urges this Court to overturn the cases. This Court is bound by decisions of our Supreme Court. As this Court explained in *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009):

> "[I]t is the Supreme Court's obligation to overrule or modify case law if it becomes obsolete, and until [that] Court takes such action, the Court of Appeals and all lower courts are bound by that authority." *Boyd v WG Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007). "The obvious reason for this is the fundamental principle that only [the Supreme] Court has the authority to overrule one of its prior decisions. Until [it] does so, all lower courts and tribunals are bound by that prior decision and must follow it even if they believe that it was wrongly decided or has become obsolete." *Paige v Sterling Hts*, 476 Mich 495, 524; 720 NW2d 219 (2006). See also *People v Metamora Water Service, Inc*, 276 Mich App 376, 387-388; 741 NW2d 61 (2007) ("It is the duty of the Supreme Court to overrule or modify caselaw if and when it becomes obsolete, and the Court of Appeals and the lower courts are bound by the precedent established by the Supreme Court until it takes such action.").

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[2] Plaintiff asserted in his response to defendant's motion for summary disposition that the board also discussed a board policy during the closed session that should have been handled during an open meeting. However, plaintiff concedes that he cannot establish that this violated the OMA because he was unable to conduct discovery after the trial court granted defendant's motion for summary disposition. Accordingly, on appeal, plaintiff focuses his OMA violation claim on the alleged settlement discussions that took place regarding the Higgs litigation.

Accordingly, this Court is not at liberty to overrule *Lee* or *Nat'l Wildlife* or, as plaintiff alternatively argues, to adopt the dissent's position with regard to whether standing may be conferred by statute. Because plaintiff does not have standing under these Supreme Court cases, the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Michael J. Kelly