

STATE OF MICHIGAN
COURT OF APPEALS

MIKE MANDICH,

Plaintiff-Appellant,

v

OWENDALE GAGETOWN AREA SCHOOLS
BOARD OF TRUSTEES, TERRY MUNTZ, DEB
QUICK, JEFF LEINWEBER, and KATHY
CHAMPAGNE,

Defendants-Appellees.

UNPUBLISHED
December 14, 2010

No. 294264
Huron Circuit Court
LC No. 08-004021-CZ

Before: JANSEN, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition based on its finding that no meeting subject to the Open Meetings Act (OMA), MCL 15.261 *et seq.*, took place because the board members present were not deliberating or deciding. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a former member of the school board, brought suit seeking an injunction and \$500 in damages plus costs and fees, alleging that the defendants violated the OMA when they held a private meeting scheduled before the regular, open board meeting on October 27, 2008. In response to plaintiff's complaint, defendants moved for summary disposition, arguing that there was no quorum of the board at the private meeting and that there was no deliberation, decision, or discussion by any of the individuals present at the gathering; therefore, this had not been a "meeting" as defined by the OMA. The trial court found that plaintiff had presented no evidence that the gathering had met the definition of "meeting" under the OMA and granted defendants' motion for summary disposition.

Plaintiff's appeal relies on *Moore v Fennville Pub Schools Bd of Ed*, 223 Mich App 196, 200; 566 NW2d 31 (1997), and *Ryant v Cleveland Twp*, 239 Mich App 430, 434; 608 NW2d 101 (2000), for the premise that "deliberation" under the OMA includes a process in reaching a decision. Plaintiff argues that part of that process includes receipt of information and that the meeting allowed committee members to receive information about the audit and to reflect on the issues related to the audit. Plaintiff correctly points out that a gathering may be subject to the

OMA “even if there is no intention that the deliberations will lead to the rendering of a decision [at the gathering].” *Nichols v Meridian Charter Twp Bd*, 239 Mich App 525, 531; 609 NW2d 574 (2000).

We review de novo a trial court’s decision to grant or deny a motion for summary disposition. *Spiek v Dep’t of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with “at least some evidentiary proof, or some statement of specific fact upon which to base his case.” *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994), quoting *Durant v Stahlin*, 375 Mich 628, 640; 135 NW2d 392 (1965).

Under the OMA, meetings of public bodies must be open to the public, and notice of the meeting must be given. Specifically, MCL 15.263 provides in relevant part:

- (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.
- (2) All decisions of a public body shall be made at a meeting open to the public.
- (3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

The relevant definitions, found in MCL 15.262, provide:

As used in this act:

(a) “Public body” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(b) “Meeting” means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

* * *

(d) “Decision” means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Here, the trial court did not err in finding that no evidence showed that deliberation took place. In *Ryant*, this Court rejected a broad definition of “deliberating,” stating:

The record does not show that any of the other township board members present exchanged any affirmative or opposing views, debated the proposed amendment, or engaged in any discussion regarding the statements made by the township supervisor As long as the township board members did not engage in deliberations or render decisions, the subject meetings did not need to be noticed as meetings of the township board. [*Ryant*, 239 Mich App at 435-436.]

Plaintiff points to no evidence that the members present exchanged views, debated, or otherwise discussed the audit. The record evidence shows the three board members who constituted the finance committee, along with the school superintendent, a secretary, and the outside auditor, gathered together for half an hour in the teacher’s lounge before the regularly-scheduled board meeting. According to the people present, the auditor presented the audit and the superintendent asked the auditor some questions. No board member asked a question or discussed anything; they “just sat there.” Afterwards, the regularly-scheduled board meeting took place, at which the auditor gave an identical presentation, and the board formally accepted the audit.

Plaintiff points to a notice from the superintendent to board members that stated, “The auditor will present the audit on Monday night I would like the Finance Committee to meet at 6:15 on Monday to discuss the audit and to listen to our concerns as we move ahead.” Thus, the meeting was not a chance meeting but was planned, with the identified purpose of discussing the audit. However, the record shows without contradiction that, in fact, no discussion took place, nor were any concerns voiced. Similar to *Ryant*, “The record does not show that any of the . . . board members present exchanged any affirmative or opposing views, debated the proposed amendment, or engaged in any discussion regarding the statements made.” *Id.* The trial court correctly found no question of fact regarding whether the board members engaged in deliberation.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Peter D. O’Connell