

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY ADER,

Plaintiff-Appellant,

v

DELTA COLLEGE BOARD OF TRUSTEES,

Defendant-Appellee.

UNPUBLISHED

July 14, 2011

No. 290583

Saginaw Circuit Court

LC No. 08-001822-CZ

ON REMAND

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

PER CURIAM.

Our Supreme Court remanded this case “for reconsideration in light of *Lansing Schools Education Ass’n v Lansing Bd of Education*, 487 Mich 349 (2010).” *Ader v Delta College Bd of Trustees*, 488 Mich 1025; 792 NW2d 335 (2011). Plaintiff, Timothy Ader, appeals the trial court’s order that granted summary disposition in favor of defendant, Delta College Board of Trustees. For the reasons set forth below, we reverse the trial court’s grant of summary disposition to defendant on standing grounds, and remand for the trial court to consider the merits of defendant’s remaining arguments.

This Court’s prior opinion summarized the facts as follows:

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. [*Ader v Delta College Bd of Trustees*, unpublished opinion per curiam of the Court of Appeals, issued June 29, 2010 (Docket No. 290583), slip op, p 1, vacated 488 Mich 1025 (2011).]

The parties filed cross motions for summary disposition. Defendant moved for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(8), challenging plaintiff's standing and arguing his failure to state a claim. Plaintiff moved for summary disposition under MCR 2.116(C)(10).

The trial court denied plaintiff's motion for failing to support his arguments with any legal authority. The court granted defendant's motion on the ground that plaintiff lacked standing because he failed to articulate a constitutional basis for standing under *Lee v Macomb Co Bd of Comm*, 464 Mich 726; 629 NW2d 900 (2001), overruled *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), and *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608; 684 NW2d (2004), overruled *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010).

This Court affirmed and applied the test for standing articulated in *Lee* and *Cleveland Cliffs* and as applied in *Lansing Schools Ed Ass'n*, *MEA/NEA v Lansing Bd of Ed*, 282 Mich App 165; 772 NW2d 784 (2009), rev'd 487 Mich 349; 792 NW2d 686 (2010). On August 6, 2010, plaintiff filed an application for leave to appeal in our Supreme Court. Six days before he filed his application, our Supreme Court decided *Lansing Schools Ed Ass'n v Lansing Bd of Education*, 487 Mich 349; 792 NW2d 686 (2010), which overruled *Lee* and *Cleveland Cliffs* and announced a new standing doctrine that is free of constitutional restraints.

On January 13, 2011, in lieu of granting plaintiff's application, our Supreme Court vacated this Court's opinion and remanded the case to this Court "for reconsideration in light of *Lansing Schools Ed Ass'n v Lansing Bd of Education*, 487 Mich 349 (2010)." *Ader v Delta College Bd of Trustees*, 488 Mich 1025; 792 NW2d 335 (2011).

This Court considers de novo the legal question whether a party has standing. *Manuel v Gill*, 481 Mich 637, 642; 753 NW2d 48 (2008). A trial court's decision on a motion for summary disposition is also a question of law that this Court reviews de novo. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

In *Lansing Schools Ed Ass'n*, the Supreme Court majority articulated its new standing doctrine as follows:

[A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Schools Ed Ass'n*, 487 Mich at 372.]

We hold that plaintiff has standing. "The OMA allows an individual to commence a civil action for injunctive relief to either compel compliance with the OMA or enjoin further noncompliance with the act." *Detroit News, Inc v Detroit*, 185 Mich App 296, 299; 460 NW2d

312 (1990). MCL 15.271(1) provides: “If 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.” (Emphasis added.) Plaintiff alleges that defendant violated the OMA by holding a closed session with its attorney that was not authorized under the exemption in MCL 15.268(e) because Higgs and his attorney were present for part of the closed session.¹ In light of the Supreme Court’s removal of the constitutional limitation on standing, the OMA alone is sufficient to confer standing on plaintiff. See *Lansing Schools Ed Ass’n*, 487 Mich at 372.

Though plaintiff has standing, summary disposition may be granted if, as defendant argued in the trial court, plaintiff failed to state a claim under MCR 2.116(C)(8) and failed to plead an actual controversy for a declaratory judgment as required by MCR 2.605(A)(1). Because the trial court did not address the merits of these claims, we remand this case for further proceedings. We do not retain jurisdiction.

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

¹ Section 8(e) allows a public body to meet in a closed session “[t]o consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.” MCL 15.268(e).