Court of Appeals, State of Michigan

ORDER

Detroit Free Press Inc v City of Detroit

Docket No. 283526

LC No. 08-100214-CZ

Brian K. Zahra
Presiding Judge

Helene N. White

Karen M. Fort Hood
Judges

The motion for immediate consideration of the application for leave to appeal is GRANTED.

The Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review, except that the trial court's order granting motion to disclose dated February 5, 2008 is amended to refer to page 175, rather than page 179.

The documents that remain in dispute, deposition exhibits 10 and 11, were properly found to be subject to disclosure under the FOIA. While the deposition presents a closer question, given the objections raised below and the arguments on appeal, we cannot conclude the trial court abused its discretion in dissolving its January 25, 2008 order of non-disclosure.

The motion for immediate consideration of the motion for stay is GRANTED.

The motion for stay is GRANTED to the extent that the trial court's February 5, 2008 order granting the motion to disclose is STAYED pending the return of the lower court record to the trial court. The Clerk of the Court shall return the lower court record to the trial court on Tuesday, February 19, 2008 unless the City of Detroit files an emergency application for leave to appeal, and a motion for stay, in the Michigan Supreme Court by the end of the business day Friday, February 15, 2008.

The motion to seal this Court's file is GRANTED to the extent that this Court's file shall remain sealed unless and until the trial court releases the materials at issue.

Fort Hood, J., joins in the order and additionally states as follows:

A trial court's decision regarding discovery is reviewed for an abuse of discretion. *Hamed v Wayne Co*, 271 Mich App 106, 109; 719 NW2d 612 (2007). Michigan has a liberal discovery policy of any matter, not privileged, that is relevant to the subject matter involved in the pending case. *Id.*; see also MCR 2.302(B)(1). "The purpose of discovery is to simplify and clarify the contested issues, which is necessarily accomplished by the open discovery of all relevant facts and circumstances

related to the controversy." *Hamed, supra*. In the present case, it is questionable that the complete discovery deposition of the deponent Michael Stefani contained relevant facts and circumstances related to this controversy. For example, Stefani was questioned regarding his conduct in the underlying litigation with regard to subpoenaed information and his compliance with the agreements set forth in that proceeding. Additionally, he testified that he did not have foundational knowledge of the underlying reason for certain activities, but essentially surmised a basis for certain action. The discovery rules provide a forum for exclusion of testimony that does not contain relevant information or information to which there has been an objection. See generally MCR 2.302(B); MCR 2.308(B), (C). In the present case, there is no indication that the parties requested that the trial court limit or redact the deposition to the extent it contained information irrelevant to documents subject to the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, or to rule on the objections contained in the deposition prior to its release. See MCR 2.308(B). An abuse of discretion occurs when the trial court selects a result outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). On this record, I cannot conclude that the trial court abused its discretion in light of the parties' briefing and handling of the case.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 13 2008
Date

Sandra Schultz Mengel
Chief Clerk