STATE OF MICHIGAN

COURT OF APPEALS

GREGORY PORTER,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
May 28, 1996

No. 178218
LC No. 94-077016-CZ

Before: Doctoroff, C.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff, an inmate incarcerated at Ionia Maximum Correctional Facility, appeals as of right the order granting defendant's motion for summary disposition in this action in which plaintiff sought relief for defendant's alleged violations of the Freedom of Information Act, MCL 15.231 *et seq*.; MSA 4.1801(1) *et seq*. We affirm.

Plaintiff contends that summary disposition was improperly granted because an issue of fact exists regarding whether defendant complied with defendant's FOIA requests. We disagree. In his initial request, plaintiff sought: (1) a March 16, 1990, memorandum regarding hooded clothes; (2) a December 2, 1993, package/letter rejection form; (3) copies of all November 1993 money order receipts, and (4) television and radio purchase order receipts. In response, defendant provided the money order receipts (item 3) and agreed to provide the hooded clothing memorandum (item 1) upon receipt of a $.20 copying fee. Defendant denied the request with respect to the package rejection form and the television and radio purchase order receipts (items 2 and 4) on the basis that the documents were not found. Defendant recommended that plaintiff provide a purchase date for the television and radio purchase order.

Plaintiff alleged that on December 15, 1993, he submitted to defendant the $.20 copying fee for the memorandum regarding hooded clothing and a supplemental FOIA request specifying purchase dates for the television and radio purchase order receipts. Plaintiff also alleged that he submitted a supplemental FOIA request to defendant on January 2, 1994, for items 1, 2 and 4. Defendant denied receipt of the copying fee or the supplemental FOIA requests.

After a de novo review of the record, *Stehlik v Johnson*, 206 Mich App 83, 85; 520 NW2d 633 (1994), we conclude that the trial court properly granted summary disposition in favor of defendant. With regard to items 3 and 4, plaintiff provided no documentary evidence to indicate that the package rejection and television receipts were among defendant's records. Nonexistence of a record is a defense to failure to produce or allow access to a record, and defendant informed plaintiff that the requested documents did not exist. *Hartzell v Mayville Comm School District*, 183 Mich App 782, 787; 455 NW2d 41(1990).

With regard to item 1, defendant submitted the affidavit of its FOIA coordinator which indicated that a prisoner disbursement authorization (PDA) for the copying fee for the memorandum was never received. The affidavit also indicated that a review of plaintiff's accounting records revealed no charges for a copying fee for a copy of the memorandum. Plaintiff claimed that he submitted a PDA for the $.20 copying fee on December 15, 1993. Plaintiff also provided the court with a copy of the PDA and a December 15, 1993, letter from the law library indicating that the PDA needed to be signed and dated by plaintiff's Resident Unit Manager (RUM) or Assistant Resident Unit Manager (ARUM). The copy of the PDA was not signed or dated by the RUM or ARUM. Thus, while this documentary evidence may raise factual issues regarding whether plaintiff attempted to pay the copying fee, it fails to raise a genuine issue regarding whether defendant received the copying fee for the memorandum.

Last, plaintiff failed to submit any documentary evidence to refute the statement in the affidavit of defendant's FOIA coordinator that he never received defendant's December 15, 1993, or January 2, 1994, supplemental requests. Defendant's duties under the FOIA only arise upon receipt of a request. MCL 15.233(1); MSA 4.1801(3)(1). Consequently, plaintiff failed to raise an issue of fact regarding whether defendant violated the FOIA with respect to the supplemental requests.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald