

STATE OF MICHIGAN
COURT OF APPEALS

FRANK CHARLES BEATTY,

Plaintiff–Appellant,

v

DETROIT POLICE DEPT,

Defendant–Appellee.

UNPUBLISHED

August 9, 1996

No. 179309

LC No. 93-316166 CZ

Before: Doctoroff, P.J., and Wahls and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from a September 16, 1994 order denying his claim for damages under the Michigan Freedom of Information Act (MFOIA), MCL 15.240; MSA 4.1801(10). While we agree that the trial court erred in its reasons for granting summary disposition, we affirm on other grounds.

Plaintiff, a prisoner in the Michigan penal system, filed this action when defendant failed to provide access to records after partially granting plaintiff’s request under MFOIA. Defendant forwarded the documents to plaintiff after it became aware of the suit, but before plaintiff filed his claim in the appropriate court.¹ Defendant moved for summary disposition arguing that it had complied with MFOIA by giving plaintiff the documents he sought and that damages were inappropriate since the trial court did not order disclosure.

Plaintiff argues that the trial court erred by granting summary disposition in reliance on an amendment making prisoners ineligible to use MFOIA. We agree. The trial court did not consider the statutory criteria for granting punitive or compensatory damages under MFOIA, stating simply that, since the Legislature had recently precluded prisoners from obtaining relief under MFOIA, awarding damages to plaintiff would be “improvident.” Thus, the trial court, in effect, applied the amendment to plaintiff’s claim which had accrued almost a year before the amendment went into effect. Since this application of the amendment would destroy plaintiff’s vested cause of action, retroactive application is impermissible. *Karl v Bryant Air Conditioning*, 416 Mich 558, 572; 331 NW2d 456 (1982).

This Court may nevertheless uphold the trial court's summary disposition order on alternative grounds, if such grounds are clear from the lower court record. See *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). Here, plaintiff claims that defendant violated MFOIA by failing to respond to a disclosure request. However, because the documents were released before the trial court ordered disclosure of any records in this action, plaintiff is not entitled to punitive damages. *Trout Unlimited v Military Affairs*, 213 Mich App 203, 221; 539 NW2d 745 (1995). Any claim plaintiff may have made for compensatory damages was waived by his failure to specifically include such damages in his complaint's request for relief. MCR 2.111(B)(2).

Affirmed on alternative grounds.

/s/ Martin M. Doctoroff
/s/ Myron H. Wahls
/s/ Michael R. Smolenski

¹ Plaintiff initially filed his claim in Detroit Recorder's Court and served defendant with a copy of the complaint before being informed that MFOIA claims should be filed with the Circuit Court. Plaintiff then filed the claim in the Wayne Circuit Court.