

STATE OF MICHIGAN
COURT OF APPEALS

MACOMB COUNTY DEPUTIES AND
DISPATCHERS ASSOCIATION, CHARLES K.
GUDENAU, DAVID K. ABBOTT, PHILIP C.
ABDOO, JASON G. ABRO, JAMES W.
ADAMS, JOHN E. ALLOR, PAUL J.
AMBROSE, CHRISTOPHER G. AMEY, SCOT
P. ANDERMAN, JOHN F. BECKER, FRANK V.
BEDNARD, BRIAN P. BIAFORE, TERRY L.
BLOUNT, DAVID L. BOUSHO, DAVID D.
BOYD, STEVEN R. BRINEY, GARY E.
BUDCHUK, JEFFERY BUDZYNOWSKI, JOHN
L. BURBACK, COLLEEN M. BURKE, JOSEPH
A. CADA, SUSANNE CARVER, MERVIN J.
CHAMPINE, MARTIN M. CHARLAN, DANIEL
G. CIKOTA, PATRICK J. CLANCY, LAUREN
G. CODDINGTON, JOHN E. COLE, EDWARD
L. COLORIDA, ROBERT P. CONAWAY,
MATTHEW CONFORTI, CINDY R. COOKE,
CHRISTOPHER L. CORY, LARRY E. COX,
BOBBI JO CRAFT, DANIEL A. DEGRAW,
DAREN R. DELANEY, BRIAN S. DEMUYNCK,
AMY J. DIGON, LUCILLE R. DILBERT,
ROBERT C. DOHERTY, JOHN T. DUBOIS,
DAWN M. FALK, LINDA A. FINDLAY,
EDWIN F. FINN, JR., THOMAS L. FLANIGAN,
KEITH R. FRINGER, SHARON L. FURNO,
LIONEL E. GALE, THOMAS K. GEML, PETER
V. GENNETTE, JEFFREY F. GENTNER,
CAREY L. GORDON, JOSEPH J. GORNEY,
ROBERT A. GORNIK, JEFFREY J.
GORNICKI, MARK P. GRAMMATICO, JEFF
W. HAASE, THOMAS L. HABEL, DARRYL J.
HAMEL, GERALD W. HANNA, JORDAN K.
HARVEY, DONALD G. HAUGH, JOHN P.
HAYMAN, MICHAEL L. HOEKVELD, LAURA
J. HORETSKI, AARON HORNE, WILLIAM D.
HUGHES, LLOYD G. HURLBURT, AARON M.
HURLEY, RHONDA L. JAGOTKA, PATRICIA
JOHNSON, ROBERT R. JOHNSON, RONALD J.
KAPUSCINSKI, LORI K. KELLIE, JEAN E.

UNPUBLISHED
February 14, 2006

KENNEY, BRADFORD J. KING, GARY N.
KING, CHRISTIAN B. KOHLMAYER,
RAYMOND B L'ESPERANCE, LEONARD J.
LAMM, CHRISTOPHER S. LAND, MICHELE
M. LAVENDER, NANCY A. LEPAGE, SEAN P.
LOUWERS, PATRICK J. MACERONI,
RONALD C. MALFITANO, DOMENICO
MARIANI, EDWARD M. MASON, JAMES A.
MCCORMACK, TIMOTHY S. MCFADDEN,
PAMELA K. MCLEAN, CHARLES A.
MEDLEY, KENNETH J. MELTON, HAROLD D.
MENTZER, JR., MARK D. MILESKI, MICHAEL
M. MILESKI, TRACY G. MILLIGAN, LORI G.
MISCH, THOMAS P. MISCOVICH, CHARLES
T. MISSIG, MARK T. MORFINO, CLIFTON R.
MORGAN, MATTHEW M. MURPHY, PHILIP
M. NEUMEYER, THOMAS S. NOBLE,
RICHARD M. NORTON, EDWARD G.
O'MEARA, NANCY L. OERMANN, TINA M.
OLD, RONALD G. OLKOWSKI, JR., KEITH P.
PAOLELLA, CHRISTOPHER J. PARASKI,
KENNETH A. PATER, VICTOR L. PATRONE,
MATTHEW J. PECHA, LAURA PEEPLES,
JEFFREY T. PELTIER, JOHN P. PERRY, JEFF
A. PINTAL, VINCENT S. PIPIA, SUSAN M.
POMILIA, DAVID M. GUARTUCCIO, JAME R.
RANDLETT, JOHN P. RAYMO, RONALD A.
REDMOND, CORBIN E. REED, CAROLYN M.
RELIFORD, PAMELA M. ROCCO, JOHN J.
ROLLO, CHARLES F. RUH, KENNETH J.
RUMPS, DAVID M. RYAN, JENNIFER L.
SASSIN, MICHAEL C. SCHARF, JR., MARK D.
SCHILLING, GREGORY SEMEROZ, JAMES R.
SHARP, LESLIE E. SHARPE, GREGORY R.
SHELL, MICHAEL C. SHORKEY, STEPHEN J.
SIERADZKI, KATHLEEN E. SLAYDEN,
MICHAEL G. SMITH, RICH J. SOLOMON,
THOMAS J. STAWSKI, JR., TAMMY L. STEC,
JEFFREY R. SWAN, GREGORY J.
SWITCHULIS, ANTHONY R. SZALKOWSKI,
KEVIN P. SZLAGA, CARRIE A. TABOR,
GREGORY R. TENCH, BRIAN S. TINKER,
THOMAS G. URBAN, STEVEN R.
VANEENOO, MICHAEL G. VANDENBOOM,
JEFFREY C. VARGO, GARY D. VENET, JR.,
FRANK A. VENTIMIGLIO, PHILIP F.
VERNIERS, JOHN H. WALLACE,

ALEXANDER P. WALSON, JOHN A. WARN,
JR., KEVIN T. WELDON, GARY J.
WILCZYNSKI, WILLIAM R. WILLHITE,
MICHELLE D. WILLIAMS, DANIEL S.
WILLIS, DAVID A. WILLIS, JR., THOMAS M.
WRIGHT, MARC A. WYZLIC and TODD C.
YAROCH,

Plaintiffs-Appellants,

v

MACOMB COUNTY PROFESSIONAL
DEPUTY SHERIFFS ASSOCIATION, JOHN A.
HARDER and KENNETH ROBERTS,

Defendants-Appellees.

No. 256789
Macomb Circuit Court
LC No. 02-000307-CZ

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, plaintiffs argue that a de facto dissolution of the Macomb County Professional Deputy Sheriff's Association (MCPDSA) occurred when plaintiffs voted to be represented by the Police Officers Association of Michigan (POAM), and thus, plaintiffs argue that the trial court erred when it held that plaintiffs were not entitled to an equitable share of the MCPDSA's assets. Furthermore, plaintiffs argue that the trial court erred when it refused to issue an order compelling the MCPDSA to refund each eligible plaintiff their \$150 mandatory deposit that was made to the MCPDSA's "Legal Defense Fund" upon hire. Therefore, plaintiffs claim that the trial court erred when it granted defendants' motion for summary disposition. We disagree.

We review a trial court's decision to grant or deny summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washentaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ.

West v General Motors Corp, 469 Mich 177, 183; 665 NW2d 468 (2003). Furthermore, the legal effect of a contractual clause is a question of law that is reviewed de novo on appeal. *Quality Products and Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003).

In interpreting a contract, this Court's obligation is to determine the intent of the contracting parties. *Nagel Precision, Inc, supra* at 375. "If the language of the contract is unambiguous, we construe and enforce the contract as written." *Id.* "Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Id.* "Once discerned, the intent of the parties will be enforced unless it is contrary to public policy." *Id.*

In relevant part, the MCPDSA's Constitution states:

Dissolution of this Association must be approved by a majority vote, by ballot, of the entire Active Membership so specified by the then current standards, rules, and laws of the State of Michigan and Michigan Labor Relations, for it to be binding on the Executive Board.

Upon proper approval of dissolution by the membership, the Executive Board shall proceed to dissolve the Association in accordance with the laws of the State of Michigan.

Here, a motion for dissolution was never made, a vote for dissolution was never made, thus a dissolution of the MCPDSA was never approved by a majority vote. Furthermore, the MCPDSA continues to operate as the exclusive bargaining unit for over 170 correctional officers. As noted by the trial court: "The fact that a large percentage of the [MCPDSA] chose to leave the [MCPDSA] does not provide a basis for a determination that the MCPDSA no longer exists as a labor organization." Thus, we conclude that the MCPDSA has not been dissolved.

Moreover, we conclude that all of the MCPDSA's assets belong to the MCPDSA as an entity and are to be used to represent the best interests of its current members. Nothing in the MCPDSA's Constitution or Bylaws suggest that the MCPDSA's assets are to be distributed to individuals who choose to leave the MCPDSA. Therefore, we conclude that the trial court did not err when it held that plaintiffs were not entitled to an equitable distribution of the MCPDSA's assets. Moreover, we believe that it is not inequitable for plaintiffs to receive nothing from the MCPDSA. The money plaintiffs contributed to the MCPDSA was used by the MCPDSA to represent plaintiffs' interests while they were members of the MCPDSA. Therefore, plaintiffs received value for all of the money they contributed to the MCPDSA before they voluntarily chose to leave the MCPDSA.

Furthermore, we disagree with plaintiffs' argument that the trial court should have stepped in and dissolved the MCPDSA. MCL 450.2825 provides:

[A court] may adjudge the dissolution of, and liquidate the assets and affairs of, a corporation, in an action filed by a shareholder, member, or director when it is established that the acts of the directors or those in control of the corporation are illegal, fraudulent, or wilfully unfair and oppressive to the corporation or to such shareholder or member or contrary to the purposes of the corporation.

The MCPDSA is a non-profit corporation. However, plaintiffs are not shareholders, members or directors of the MCPDSA and have not established that those in control of the MCPDSA have acted illegally, fraudulently or willfully unfair and oppressive to the corporation, shareholders or members of the MCPDSA or contrary to the purpose of the MCPDSA. Therefore, we conclude that the courts have no jurisdiction to dissolve the MCPDSA under that statutory provision. “When the bylaws of [a union are] reasonable and valid, provide a mode for determining when relief shall be given or denied to members by tribunals provided for therein, redress therefor may not be sought in the courts.” *Mayo v Great Lakes Greyhound Lines*, 333 Mich 205, 213; 52 NW2d 665 (1952) (citation omitted). Therefore, we conclude that the trial court did not err when it failed to step in and dissolve the MCPDSA.

Finally, we conclude that the trial court did not err when it refused to enter an order requiring the MCPDSA to reimburse plaintiffs the \$150 that each eligible plaintiff had contributed to the MCPDSA’s “Legal Defense Fund” upon being hired by the department. Charles Gudenau stated that it was the MCPDSA’s practice to refund \$150 to each employee that left the bargaining unit for any reason. A. John Harder stated that only employees that were hired prior to December 31, 1997, and were terminated, resigned or retired from the department were eligible for such a refund. The trial court concluded that a reasonable construction of the MCPDSA’s Bylaws provided that members “would be entitled to receive reimbursement for his or her contribution to the Legal Defense Fund only upon termination, resignation, or retirement from the Department.”

Regardless of whether an employee hired prior to December 31, 1997, who left the “bargaining unit” (as opposed to being terminated, resigning or retiring from the department) is entitled to a refund of his \$150 contribution to the “Legal Defense Fund,” we conclude that the trial court did not err when it refused to enter an order requiring the MCPDSA to reimburse plaintiffs because not one individual plaintiff has brought forth evidence to support the conclusion that he/she is entitled to reimbursement, has requested reimbursement and has been wrongfully denied the reimbursement by the MCPDSA.¹ In fact, Gudenau admits that the MCPDSA has reimbursed members who have retired and requested reimbursement, consistent with past practice. Therefore, we conclude that the trial court properly granted defendants’ motion for summary disposition.²

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Henry William Saad

¹ The only evidence that has been provided is that Gudenau made a request to the MCPDSA for a blanket refund of \$150 per plaintiff.

² We emphasize that the dismissal of the Legal Defense Fund refund claim was without prejudice.