

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT DAVIS,

Plaintiff-Appellant,

v

WAYNE COUNTY AIRPORT AUTHORITY,
WAYNE COUNTY AIRPORT AUTHORITY
BOARD, TURKIA AWADA MULLIN,

Defendants-Appellees,

and

TRUSTINUS, L.L.C. and JOHN A. KRASULA,

Defendants,

UNPUBLISHED

April 18, 2013

No. 308919

Wayne Circuit Court

LC No. 11-015623-CZ

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying his motion for court costs and attorney fees arising out of violations of the Open Meetings Act (OMA), MCL 15.261 *et seq.* We reverse and remand to the trial court to determine the amount of costs and fees to which plaintiff is entitled.

Plaintiff filed a multi-count complaint seeking various relief, including a declaratory judgment that Wayne County Airport Authority Board (WCAA Board) violated the OMA in connection with the hiring of Turkia Awada Mullin for the position of CEO of Wayne County Airport Authority (WCAA), and an order permanently enjoining all defendants from further violations of and noncompliance with the OMA. Plaintiff also sought court costs and attorney fees, asserting that they were mandatory if the trial court determined that defendants violated the OMA. The trial court granted defendant summary disposition as to three of the counts, finding that they were barred by *res judicata* because the claims should have been brought in a previous action that plaintiff filed against the WCAA and WCAA Board. The remaining counts involved allegations that the WCAA Board violated the OMA by holding closed sessions on September 23, 2010, and December 2, 2010 without having two-thirds of the board members vote, and for failing to make the proposed meeting minutes of its Audit Committee available for public inspection within the time prescribed by the OMA. The WCAA and WCAA Board admitted to

these allegations, but referred to them as “technical violations.” Due to these admissions, the trial court found that the WCAA and WCAA Board violated the OMA. The trial court granted plaintiff’s request for declaratory judgment, stating the following:

The Wayne County Airport Authority violated the Open Meetings Act when it held two closed sessions in 2010 without a 2/3 vote of the full Wayne County Airport Authority Board, and when it provided minutes of an Audit Committee meeting several days beyond the 8 business day deadline imposed by the Open Meetings Act.

However, the trial court declined to issue an injunction because it did not find one necessary. The court stated that the violations “were technical violations over a period of time,” and its ruling in the previous case “really brought the issue of the Open Meetings Act to the Defendants.” In addition, the trial court declined to award plaintiff court costs and attorney fees. The trial court noted that plaintiff only had to succeed in obtaining relief to recover attorney fees. However, the trial court denied the costs and fees because “the Plaintiff did not prevail on the most significant issues and did prevail on the least significant issues. So, . . . it’s a wash . . . because if you look at the whole case really on the most significant issues, the Defendants prevailed.” On appeal, plaintiff argues that the trial court erred when it denied his request for court costs and attorney fees pursuant to MCL 15.271(4), after it found that defendants violated the OMA. We agree.

We review a trial court’s decision whether to award court costs and attorney fees for an abuse of discretion. *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010).

Under the OMA, court costs and attorney fees are mandatory “when plaintiff obtains relief in an action brought under the act.” *Kitchen v Ferndale City Council*, 253 Mich App 115, 127; 654 NW2d 918 (2002), citing MCL 15.271(4). MCL 15.271(4) provides:

If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

“Accordingly, there are three requirements for obtaining costs and attorney fees under this subsection: (1) a public body must not be complying with the act, (2) a person must commence a civil action against the public body ‘for injunctive relief to compel compliance or to enjoin further noncompliance with the act,’ and (3) the person must succeed in ‘obtaining relief in the action.’” *Leemreis v Sherman Twp*, 273 Mich App 691, 704; 731 NW2d 787 (2007), quoting MCL 15.271(4).

The first element is satisfied here, where the trial court found that the WCAA and WCAA Board violated the OMA when it held two closed sessions without the requisite number of votes and when it failed to make the proposed minutes of its Audit Committee meeting available for public inspection within the time prescribed by the OMA. The second element is also satisfied

because plaintiff sought injunctive relief to enjoin defendant from further violations of and noncompliance with the OMA.

The main issue in this appeal is whether the third element, that the person who brought the case “obtain[ed] relief in the action,” was satisfied. MCL 15.271(4). That question turns on whether a declaratory judgment is considered “relief” under the OMA. Defendants argue that plaintiff did not obtain relief, because according to *Leemreis*, not all declaratory relief is the equivalent of an injunction. However, defendants’ reliance on *Leemreis* is misplaced. In *Leemreis*, the plaintiffs never requested an injunction. *Leemreis*, 273 Mich App at 707. They only sought an invalidation of a zoning board decision. *Id.* at 694. Defendant correctly points out that this Court noted that the declaratory relief granted by the trial court was not the equivalent of an injunction; however, the Court’s statement was made in regards to the second element, which focuses on the relief sought, not the relief obtained. *Id.* at 707. Thus, because the plaintiffs did not ask for injunctive relief, this Court determined that they were not entitled to costs and attorney fees under MCL 15.271(4), because they did not satisfy the second element. *Id.* at 709.

As *Leemreis* discusses, there are a line of cases in which we have held that declaratory relief is considered “relief” under the OMA. See *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78; 669 NW2d 862 (2003), *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525; 609 NW2d 574 (2000), *Schmiedicke v Clare Sch Bd*, 228 Mich App 259; 577 NW2d 706 (1998), and *Ridenour v Dearborn Bd of Ed*, 111 Mich App 798; 314 NW2d 760 (1981). We have stated that “neither proof of injury nor issuance of an injunction is a prerequisite for the recovery of attorney fees under the OMA.” *Herald Co, Inc*, 258 Mich App at 92. Further, the fact that the trial court determines that an injunction is unnecessary does not affect the analysis under MCL 15.271(4), because “a trial court’s finding that a violation of the OMA has occurred constitutes declaratory relief that is adequate to justify an award of attorney fees and costs.” *Nicholas*, 239 Mich App at 536; see also *Morrison v East Lansing*, 255 Mich App 505, 521 n 11; 660 NW2d 395 (2003) (“Where a trial court declares that the defendants violated the OMA, but finds it unnecessary to grant injunctive relief, the plaintiffs are entitled to actual attorney fees and costs.”).

Accordingly, the third element is also satisfied here, where the trial court determined that the WCAA and WCAA Board violated the OMA and granted plaintiff a declaratory judgment. Thus, plaintiff is entitled to court costs and attorney fees pursuant to MCL 15.271(4).

Defendants also argue that this Court should consider the futility of the relief plaintiff sought at the time he filed this action, which was the second action he filed against defendants. However, when the plain language of a statute is unambiguous, our Supreme Court has stated that we should “presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written.” *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). “Under the plain meaning rule, ‘courts should give the ordinary and accepted meaning to the mandatory word ‘shall’ . . . unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.’” *Johnson v Johnson*, 276 Mich App 1, 8; 739 NW2d 877 (2007), quoting *Browder v Int’l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982). Because plaintiff has satisfied all three criteria for recovery of court costs

and attorney fees according to the plain language of MCL 15.271(4), the trial court's denial of his request was erroneous.

We reverse and remand to the trial court to determine actual court costs and attorney fees pursuant to MCL 15.271(4). We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood