

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN REHABILITATION CLINIC, INC.,
and DR. JAMES NIKOLOVSKI,

UNPUBLISHED
January 10, 2006

Plaintiffs-Appellants,

v

CITY OF DETROIT,

No. 263837
Wayne Circuit Court
LC No. 05-505333-AZ

Defendant-Appellee.

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court’s order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At one time, defendant allowed unrestricted access to traffic accident reports, but it changed its policy so that only those involved in the accident and their attorneys, insurance agencies, and family members could access the reports. Plaintiffs, a chiropractic clinic and a chiropractor, had regularly sent an agent to the police department to view the reports and to collect the information they contained.

Plaintiffs filed a complaint for injunctive relief in circuit court alleging that defendant’s policy of restricting access violated the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Plaintiffs asserted that they would suffer immediate and irreparable harm if the trial court did not issue an injunction precluding defendant from enforcing its policy.¹ Defendant moved for summary disposition claiming that plaintiffs had failed to assert and support a legally recognized right to access the documents. Defendant acknowledged that in the past access to accident reports had been available to the public, but contended that with the advent of the FOIA, access

¹ This was the second action plaintiffs filed in circuit court. The circuit court removed the first action to federal court. The federal court denied plaintiffs’ motion for a preliminary injunction. *Michigan Rehabilitation Clinic, Inc v Detroit*, 310 F Supp 2d 867 (ED Mich, 2004). Ultimately, the federal action was dismissed.

had been restricted in accordance with the statutes and case law. The trial court agreed, relying on *Larry S Baker, PC v Westland*, 245 Mich App 90; 627 NW2d 27 (2001).

Plaintiffs argue that the trial court erred when it denied their motion for a preliminary injunction and granted defendant summary disposition. We disagree. According to *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998), a court should consider the following four factors when determining whether to issue a preliminary injunction:

(1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable injury if the relief is not granted.

The decision to issue a preliminary injunction is within the discretion of the trial court. *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001). We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The accident reports contain personal information, including the names, addresses, dates of birth, and driver's license numbers of accident victims. According to MCL 15.243(1)(b)(iii), a public body is exempt from disclosing investigative records compiled for law enforcement purposes if disclosure would "constitute an unwarranted invasion of personal privacy." We have previously held that disclosure of accident reports merely for the identification of potentially injured individuals is an unwarranted invasion of privacy, so governmental entities are not required to make the reports public. *Larry S Baker, PC, supra* at 95-98. The privacy right at issue in this case was created by state law, so plaintiffs' citation of federal law is irrelevant under the circumstances. *Michigan Rehabilitation Clinic, Inc v Detroit*, 310 F Supp 2d 867, 870 n 1 (ED Mich, 2004). Plaintiffs' argument that the reports must be disclosed because the accident victims have a diminished right to privacy is not supported by Michigan law, but undermined by it. *Larry S Baker, PC, supra*.

Because the accident reports are not subject to public disclosure, plaintiffs have not demonstrated that they are likely to succeed on the merits of their claim. They have also failed to demonstrate that they would be irreparably harmed if a preliminary injunction did not issue, or that no harm to those involved in traffic accidents, such as the disclosure of embarrassing facts, would occur if personal reports' information were disclosed without restriction. *Larry S Baker, PC, supra* at 95. Therefore, the trial court did not abuse its discretion by denying plaintiffs' request for a preliminary injunction. Moreover, plaintiffs failed to provide evidentiary and legal support for their underlying disclosure claim, so the trial court did not err by granting defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot