

Court of Appeals, State of Michigan

ORDER

Kenneth J Speicher v Columbia Township Board of Trustees

Docket No. 306684

LC No. 11-600857 CZ

Kurtis T. Wilder
Presiding Judge

Peter D. O'Connell

Kirsten Frank Kelly
Judges

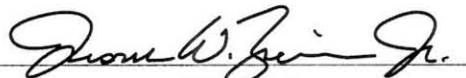
The Court orders that the motion for reconsideration is GRANTED, and that portion of this Court's opinion Issued January 22, 2013 as to attorney fees is hereby VACATED. A subsequent opinion as to attorney fees only is attached to this order.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 19 2013

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH J. SPEICHER,

Plaintiff-Appellant,

v

COLUMBIA TOWNSHIP BOARD OF
TRUSTEES and COLUMBIA TOWNSHIP
PLANNING COMMISSION,

Defendants-Appellees.

UNPUBLISHED
January 22, 2013

No. 306684
Van Buren Circuit Court
LC No. 11-600857-CZ

Before: WILDER, P.J., and O'CONNELL and K.F. KELLY, JJ.

PER CURIAM.

In this action alleging violations of the Open Meeting Act (“OMA”), MCL 15.261 *et seq.*, plaintiff appeals as of right from an order granting summary disposition in favor of defendants. Because defendants plainly violated the OMA by failing to post notice of changes to “the schedule of regular meetings of a public body . . . within 3 days after the meeting at which the change is made,” MCL 15.265(3), we find that the trial court erred in failing to grant declaratory relief to plaintiff. We further conclude that plaintiff failed to demonstrate his entitlement to injunctive relief and that, as a matter of law, the trial court correctly granted summary disposition in favor of defendants as to this prayer for relief. We affirm in part, reverse in part, and remand.

In March 2010, the Columbia Township Board of Trustees (“Board”) established that the regular meetings for both the Board and the Columbia Township Planning Commission (“Commission”) would take place every month. However, at an October 18, 2010, Commission meeting, the Commission discussed and decided to hold quarterly rather than monthly meetings beginning in 2011.

MCL 15.265(3) of the OMA requires that changes to “the schedule of regular meetings of a public body be posted within 3 days after the meeting at which the change is made.” However, it is clear from the record that defendants did not post notice of this change on or before October 21, 2011, i.e., within 3 days of the October 18, 2011, meeting at which the Commission changed its regular meeting schedule. Therefore, plaintiff was entitled to summary disposition and declaratory relief on this particular issue.

However, the trial court's order granting summary disposition in favor of defendants was not erroneous in all respects. Plaintiff's assertion that the schedule was changed at a meeting that was not open to the public is without merit because the October 18, 2010, meeting, where the decision to move to a quarterly meeting schedule was made, was open to the public. Further, there was no evidence that the Board or Commission made scheduling decisions on any different day that was not open to the public.

Finally, the trial court correctly denied plaintiff's request for injunctive relief. While the Commission's failure to timely post its new meeting schedule was a technical violation of the OMA, there was no evidence that the Commission had a history of OMA violations, there was no evidence that this violation was done willfully, and there was no evidence that the public was harmed in any manner by this OMA violation. Plaintiff claims that he was injured because he was unable to present various issues to the Commission at the February and March 2011 meetings that were cancelled. In other words, plaintiff claims injury resulting from the meeting schedule change and not from defendant's *failure to timely post the schedule change*. As conceded by plaintiff at oral argument, defendant did not violate the OMA by changing its regular meeting schedule from monthly to quarterly. Moreover, it is clear from the record that plaintiff did not suffer the injury he claims to have suffered, as it is undisputed that plaintiff had the same opportunity as every other citizen to address the Commission at the meetings it did hold, and plaintiff presented the issues he was concerned about to the Commission at the December 2010, January 2011, and the April 2011 meetings. Thus, because his alleged "injuries" were not caused by the OMA violation, no injunctive relief was warranted.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. Additionally, given that the technical nature of this OMA violation resulted in no injunctive relief being warranted, plaintiff is not entitled to any attorney fees or costs under MCL 15.271(4) on remand. We do not retain jurisdiction. No costs are taxable pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly