

# Order

Michigan Supreme Court  
Lansing, Michigan

January 8, 2010

Marilyn Kelly,  
Chief Justice

139307 & (75)

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

JEWISH ACADEMY OF METROPOLITAN  
DETROIT,

Plaintiff-Appellee,

v

SC: 139307  
COA: 283885  
Oakland CC: 2004-058811-CZ

MICHIGAN HIGH SCHOOL ATHLETIC  
ASSOCIATION,

Defendant-Appellant,

and

SOUTHFIELD CHRISTIAN, INKSTER PUBLIC  
SCHOOLS, FRANKLIN ROAD CHRISTIAN, and  
OAKLAND CHRISTIAN,

Defendants.

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On order of the Court, the motion for miscellaneous relief is GRANTED. The application for leave to appeal the June 16, 2009 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH, J., would remand this case to the Court of Appeals for consideration of the issues briefed by the defendant that the Court of Appeals did not consider because those issues were not included in the defendant's statement of questions involved.

MARKMAN, J. (*dissenting*).

In *Communities for Equity v Michigan High School Athletic Association*, 178 F Supp 2d 805 (2001), aff'd 459 F 3rd 676 (CA6, 2006), the United States District Court for the Western District of Michigan held that defendant, Michigan High School Athletic Association's, scheduling of high school athletic seasons violated the United States Constitution, as well as both federal and state civil rights law, and directed the MHSAA to reconfigure its scheduling. In the instant case, the trial court, concluding that the

MHSAA has again violated the United States constitution and state law, as well as the Michigan constitution, now enjoins the MHSAA from maintaining an array of rules that define the conditions under which member schools may participate in interscholastic sports competition, and again requires that defendant's schedules be reconfigured. Thus, in yet one more realm of activity, the decisions of judges have preempted the decisions of those who have been authorized by either contract or the representative processes of government to undertake such decisions.

Perhaps, in the end, such preemption may be required by the law or the constitution, but, if so, it will be no thanks to this Court, or the Court of Appeals, that this will ever be known. Defendants here have been deprived even of the opportunity to seek to justify its policies on the grounds that these are in the best interests of hundreds of high schools throughout this state and in the best interests of hundreds of thousands of high school athletes, as well as their families and friends. Moreover, defendants have been denied the opportunity to seek to justify its policies on the grounds that these are in the practical interests of administering statewide tournaments, minimizing the loss of classroom time for student athletes, effectively managing available athletic facilities, minimizing security concerns, maximizing community involvement, optimizing revenues, promoting consistent and predictable conditions under which schools from widely varying geographic and other circumstances can engage in athletic competition, and promoting competitive equity. Neither the Court of Appeals nor this Court will even deign to hear such arguments, and as a result the scope of decision-making by judges will once again be enhanced and the scope of decision-making by other public and private institutions will be diminished.

Instead, the majority allows the Court of Appeals to affirm the trial court's assertion of authority purely on the grounds that defendant's brief on appeal failed to contain a summary statement setting forth all of the questions involved in the appeal, MCR 7.212(C)(5), and therefore that the omitted issues were waived. To clearly understand matters, the Court of Appeals does not argue that any issues were not raised and argued in defendant's brief, that any such issues were not argued thoroughly, that plaintiff did not equally thoroughly respond to these issues in its own brief, or that any harm inured to plaintiffs as a result of the absent summary. Rather, the Court of Appeals argues only that defendant failed to set forth a separate summary. Apparently concluding that such a brief did not "substantially comply" with the court rules, MCR 7.212(I), and that a "supplemental brief" would not be in order "correcting the deficiencies," *id.*, the Court of Appeals effectively dismissed this appeal.

While acknowledgedly a matter within the Court of Appeals' discretion, MCR 7.216(A)(10), I believe that this particular exercise constituted an unmistakable abuse of discretion. In virtually every previous decision, in which an appeal was effectively dismissed under this rule, there were *additional* reasons why issues raised in an appellate

brief were not considered, such as a failure to support claims with proper legal authority, that a claim was not presented to or ruled upon by the trial court, or that the claims implicated matters of jurisdiction. I am unaware of any previous opinion that suggests that an appellate court may refuse to consider fully-briefed issues — issues constituting the principal issues in an appeal — for the sole reason that such issues were inadvertently not included in the appellant’s summary statement of questions involved. Moreover, I am unaware of any opinion that even suggests that a brief of the instant sort does not “substantially comply” with MCR 7.212. For these reasons, I would reverse and remand to the Court of Appeals for that court to fully consider the substantive arguments raised by both parties.



s0105

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 8, 2010

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk