

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES PORPHIR,

Plaintiff-Appellant/Cross-Appellee,

v

BOARD OF COUNTY COMMISSIONERS OF
MASON COUNTY, MASON COUNTY SURVEY
AND REMONUMENTATION PEER REVIEW
GROUP, MASON COUNTY
REMONUMENTATION BOARD and KENNETH
L. ROSS, Individually as MASON COUNTY
SURVEYOR,

Defendants-Appellees/Cross-
Appellants.

UNPUBLISHED

August 6, 1999

No. 206637

Mason Circuit Court

LC No. 96-011393 CZ

Before: Gage, P.J., and White and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10)¹ and denying plaintiff's motion for summary disposition. Defendants cross-appeal, requesting that this Court affirm the trial court's decision. We affirm.

This case involves a suit brought pursuant to the Michigan Open Meetings Act (the OMA), MCL 15.261 *et seq.*; MSA 4.1800(11) *et seq.*, based on four meetings conducted by defendant Mason County Survey and Remonumentation Board (the Board) in the basement of the home of defendant Mason County Surveyor, Kenneth Ross. The last such meeting occurred in December 1994. Ross posted public notices of the meetings on a utility pole on his lot.

In September 1996, plaintiff filed a complaint against defendants, alleging that they violated §§ 3, 4, and 5 of the OMA by holding meetings in a residential dwelling and not providing proper notice of the meetings. Defendants moved for summary disposition based, in part, on the fact that the Board was already subject to an injunction entered pursuant to this Court's decision in *Schulke v Mason County Bd of Comm'rs, et al.*, unpublished opinion per curiam of the Court of Appeals, issued

December 17, 1996 (Docket No. 189450). The plaintiff, Gaye Schulke, had brought suit under the OMA against the same defendants as plaintiff in this case, based on the same four meetings. Schulke was represented by the same attorney who filed the instant plaintiff's complaint. Although the trial court in *Schulke* awarded summary disposition to defendants, this Court reversed and remanded, finding that because defendants admitted to violating the OMA and Schulke brought suit under the OMA, Schulke was entitled to injunctive relief as well as attorney fees. Subsequently, a stipulated order was entered, prohibiting defendants from meeting in any privately owned buildings, requiring them to post notices of all their meetings in the Mason County Courthouse, and rendering the decisions reached at the four meetings challenged null and void.

Plaintiff first argues on appeal that because defendants admitted to a violation of the OMA and he had brought an action to enjoin them, he was entitled to injunctive relief as a matter of law under MCL 15.271; MSA 4.1800(21). Whether injunctive relief should be granted is within the sound discretion of the trial court and must be based on the facts of the particular case. *Wilkins v Gagliardi*, 219 Mich App 260, 276; 556 NW2d 171 (1996). Injunctive relief should be granted only when (1) justice requires it, (2) there is no adequate remedy at law, and (3) there exists a real and imminent danger of irreparable harm. *Id.*

The purpose of the OMA, MCL 15.261 *et seq.*; MSA 4.1800(11) *et seq.*, is to promote openness and accountability in government. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993). Accordingly, MCL 15.271(1); MSA 4.1800(21)(1), which governs actions for injunctive relief for noncompliance with the OMA, provides as follows:

If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

Defendants' last alleged violation of the OMA occurred in December 1994. Nearly two years later, on September 6, 1996, plaintiff filed his complaint. Pursuant to the stipulated order entered in the *Schulke* case on February 21, 1997, with which plaintiff's counsel is intimately familiar, defendants were already enjoined from meeting in private or without providing public notice at the time the trial court heard oral arguments on the parties' motions and issued its decision in December 1997. At that point, the Board had complied with the OMA for approximately three years. Thus, we find that there was no real and imminent danger of irreparable harm and, therefore, no reason to impose an injunction. *Wilkins, supra* at 276.

Plaintiff maintains that he is entitled to injunctive relief beyond that obtained pursuant to *Schulke* because the prior injunctive order does not provide him specific protection against future actions of defendants that could adversely affect his property. We find, however, that this relief is not contemplated by the OMA. As noted above, the purpose of the OMA is to promote government openness and accountability. *Booth Newspapers, supra*. Nothing in the OMA suggests that a plaintiff may obtain injunctive relief against actions by a public body that *may* affect him *personally* at some point in the future. The language of the OMA's injunction provision contemplates only actions brought

“to compel compliance or to enjoin further noncompliance” with the OMA. MCL 15.271(1); MSA 4.1800(21)(1) (emphasis added). Therefore, because plaintiff has failed to establish a genuine issue of material fact with regard to his claim for injunctive relief under the OMA, we find that summary disposition for defendants was proper. *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997) (A motion for summary disposition pursuant to MCR 2.116(C)(10) tests a claim’s factual support; the motion should be granted when the record that might be developed would not leave open an issue on which reasonable minds might differ).²

Lastly, plaintiff contends that he was entitled to attorney fees in this case, even if he is not successful in obtaining the injunctive relief he requested. The clear language of the attorney fee provision of the OMA conditions the award of attorney fees on (1) a public body not complying with the act, (2) a person initiating a civil action against that body for injunctive relief compelling compliance or enjoining further noncompliance with the OMA, and (3) the person successfully obtaining relief in the action. MCL 15.271(4); MSA 14.8100(21)(4). Although plaintiff argues that the Legislature intended that anyone expending money to enforce the provisions of the OMA be entitled to recover his costs and attorney fees, the language of the statute does not express that intent. Rather, it specifically conditions recovery on the plaintiff “succeed[ing] in obtaining relief in the action.” The Legislature is presumed to have intended the meaning it plainly expressed. *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997); *McFarlane v McFarlane*, 223 Mich App 119, 123; 566 NW2d 297 (1997). Although defendants violated the OMA and plaintiff brought an action for injunctive relief, plaintiff failed to obtain that relief. Therefore, we find that under the clear language of the statute plaintiff was not entitled to an award of attorney fees.³ See *Felice v Cheboygan Co Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jane E. Markey

¹ While defendants moved for summary disposition pursuant to MCR 2.116(C)(4), (7), (8), and (10), the trial court did not indicate under which of the court rules it granted the motion. Because the court referred to pleadings outside the record and did not address arguments regarding subject matter jurisdiction under (C)(4), or any bar to suit under (C)(7), we assume that the court granted the motion pursuant to MCR 2.116(C)(10).

² Furthermore, to the extent plaintiff’s complaint alleges that the Board’s actions taken at the meetings held in violation of the OMA constituted an unlawful taking of plaintiff’s private property, this claim is without merit. In count V of his complaint, plaintiff alleged that “the subject matter of the meetings complained of in this cause of action resulted in the setting of many quarter sections which will have substantial impact on public and the Plaintiff’s property,” and that, “[i]f allowed to stand, the decisions reached at the meetings complained of in this cause of action will have a substantial impact on the nature, size and extent of the Plaintiff’s property,” effectively “amount[ing] to a taking of the Plaintiff’s property without due process of law.” Plaintiff’s argument ignores, however, that after this Court’s

remand to the trial court in *Schulke, supra*, defendant stipulated that the Board's decisions made at the four challenged meetings were null and void. While it could be argued that plaintiff should be entitled to attorney fees from the time he filed the complaint in the instant action until the time the stipulated order was entered in *Schulke, supra*, plaintiff has not couched his argument in these terms nor provided evidence from which we could make such a determination, and it appears that the bulk of the legal work done in the instant case occurred after the stipulated order was entered on February 20, 1997.

³ Although plaintiff argues that under *Menominee Co Taxpayers Alliance, Inc v Menominee Co Clerk*, 139 Mich App 814, 820; 362 NW2d 871 (1984) and *Ridenour v Bd of Ed of City of Dearborn School Dist*, 111 Mich App 798, 806; 314 NW2d 760 (1981), he is entitled to attorney fees even if he did not obtain injunctive relief, we note that in those cases, the plaintiffs were successful in obtaining some relief as a result of their suits, albeit not in the form of a formal injunction. In this case, plaintiff obtained no relief as a result of his suit.