

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SALINE AREA SCHOOLS and SAMUEL A.  
SINICROPI,

UNPUBLISHED  
May 1, 2007

Plaintiffs/Counter-Defendants-  
Appellees,

v

JOHN MULLINS and TANNY MULLINS,

No. 272558  
Washtenaw Circuit Court  
LC No. 04-000060-CC

Defendants/Counter-Plaintiffs-  
Appellants.

---

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendants appeal the trial court's order that granted plaintiffs' motion for summary disposition on defendants' counterclaims. We affirm.

This case arises out of a number of incidents involving defendants' allegedly inappropriate behavior during their sons' high school wrestling meets. Plaintiffs filed this action against defendants in January 2004, and alleged that defendants' conduct toward the team, its coaches, and the families of the coaches was so disruptive that it warranted judicial intervention. Defendants filed a counterclaim and contended that they merely spoke out against certain policies of the school and the athletic program, and that plaintiffs retaliated against them for doing so.

I. Attorney Fees Under the Open Meetings Act

Defendants argue that the trial court erred when it failed to award them attorney fees under MCL 15.271(4) of the Open Meetings Act (OMA). MCL 15.271(1) provides that "a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act." Further, under MCL 15.271(4), "[i]f 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." MCL 15.271(4).

The record reflects that, though plaintiffs admit that a board member asked Mrs. Mullins not to videotape a school board meeting on August 24, 2004, at the next board meeting on September 14, 2004, the school board explicitly acknowledged that the OMA requires that it permit the public to record the meetings. Yet, more than three months after the board stated that the public is permitted to record meetings under OMA, defendants filed a counterclaim under OMA, MCL 15.271(1), and sought a temporary and permanent injunction to prevent further noncompliance with the act. Rather than issue an injunction, the trial court awarded defendant \$250 in damages.<sup>1</sup>

The record compels the conclusion that defendants did not commence an “action to compel compliance or to enjoin further noncompliance with” the OMA and defendants did not sustain their burden to show that they were entitled to a temporary or permanent injunction. A past violation of the OMA, by itself, is not sufficient “to constitute a real and imminent danger of irreparable injury” to support an injunction. *Wilkins v Gagliardi*, 219 Mich App 260, 275-276; 556 NW2d 171 (1996). Again, because the board acknowledged that the public is permitted to videotape meetings and because no evidence suggests that defendants or other members of the public were prevented from recording future meetings, defendants did not establish a “real or imminent danger of irreparable injury,” *id.* at 276, and were not entitled to the relief sought, a preliminary or permanent injunction. *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525, 536 n 3; 609 NW2d 574 (2000). In other words, defendants did not seek relief under the OMA to compel compliance because plaintiff complied well before defendants commenced the action. See *Ridenour v Bd of Ed of the City of Dearborn School Dist*, 111 Mich App 798; 314 NW2d 760 (1982). Further, defendants did not request declaratory relief, see *Nicholas, supra* at 536 n 3, and defendants did not show an impairment of public rights. Further, the trial court did not enter an order or judgment that compelled compliance with the OMA, nor did the court enjoin plaintiffs’ noncompliance, or invalidate any decision by plaintiffs, see *Felice v Cheboygan Cty Zoning Comm*, 103 Mich App 742; 304 NW2d 1 (1981). Accordingly, we reject defendants’ assertion that they are entitled to costs and attorney fees.

## II. Breach of Contract

Defendants claim that the trial court erred when it dismissed their breach of contract claim. Specifically, defendants contend that because the parties’ February 2004 consent order constitutes a contract, any violation of its terms amounts to a breach of that contract. Defendants cite *In re Lobaina*, 267 Mich App 415, 418; 705 NW2d 34 (2005) to support their assertion that “[j]udgments entered pursuant to the agreement of parties are of the nature of a contract.” *Id.* at 418, quoting *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). However, *Lobaina* also states that judgments entered into “upon the *settlement* of the parties . . . represents a contract, which . . . is to be interpreted as a question of law.” *Id.* A “settlement” is “[a]n agreement ending a dispute or lawsuit.” Black’s Law Dictionary (7th ed). Because the February 2004 consent order did not settle the case or end the lawsuit, the trial court correctly dismissed defendants’ breach of contract claim.

---

<sup>1</sup> Plaintiffs do not appeal the trial court’s \$250 award.

### III. 42 USC 1983

Defendants further assert that the trial court erroneously dismissed their 42 USC 1983 claim. 42 USC 1983 governs civil actions for deprivation of civil rights under the federal Constitution. The statute states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

“A cause of action under § 1983 is stated where a plaintiff shows (1) that the plaintiff was deprived of a federal right, and (2) that the defendant deprived the plaintiff of that right while acting under color of state law.” *Davis v Wayne Co Sheriff*, 202 Mich App 572, 576-577; 507 NW2d 751 (1993).

In *Good News Club v Milford Central School*, 533 US 98, 106-107; 121 S Ct 2093; 150 L Ed 2d 151 (2001), the United States Supreme Court explained:

When the State establishes a limited public forum, the State is not required to and does not allow persons to engage in every type of speech. The State may be justified “in reserving [its forum] for certain groups or for the discussion of certain topics.” The State’s power to restrict speech, however, is not without limits. The restriction must not discriminate against speech on the basis of viewpoint, and the restriction must be “reasonable in light of the purpose served by the forum . . . .” [Modification in original; citations omitted.]

Defendants assert that plaintiffs employed tactics that limited their speech and actions at the wrestling matches in order to stop their lawful criticism of school athletic policies and behavior by athletic department personnel. Defendants assert that the school fabricated charges of disorderly behavior on defendants’ part at the wrestling matches. However, in the February 2004 consent order, defendants agreed to abide by a list of restrictions on their activities at wrestling matches and their contacts with listed members of the school’s athletic department, and they agreed to not attend certain functions. The consent order both legitimizes plaintiffs’ actions and defendants’ speculation about underlying motives for the actions taken (as set forth in the consent order) cannot form the basis of a § 1983 claim. Furthermore, the February 2004 consent order called for the appointment of a neutral party to investigate defendants’ allegations concerning the athletic department. That investigator was appointed and issued a report. Indeed, in a second consent order, the school district agreed to implement certain changes identified in the report. Thus, defendants’ concerns were presented and addressed.<sup>2</sup>

---

<sup>2</sup> The court also correctly rejected defendants’ claim in part because, though they claimed that  
(continued...)

Affirmed.

/s/ Michael R. Smolenski  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder

---

(...continued)

their children were victims of plaintiffs' retaliatory actions, the children were not parties to the action.