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C O U R T   O F   A P P E A L S

CITIZENS FOR PUBLIC ACCOUNTABILITY & RESPONSIBLE DEVELOPMENT, STEPHEN R. EMSLEY, JAMES WESLEY WILSON II, TERESA MARGRET ALLEN, FRANK ALAN CARLSEN, DIANE ELEANOR CARLSEN, and KEITH JAMES GRAHAM, Plaintiffs-Appellants, and STEVEN H. LAWRENCE, JOHN HORTON MILLER, MICHELLE SUZANNE MILLER, and ANN MARIE KOTYLO, Plaintiffs,	UNPUBLISHED May 26, 2011
v NORTHVILLE CHARTER TOWNSHIP BOARD OF TRUSTEES, Defendant-Appellee.	No. 292311 Wayne Circuit Court LC No. 08-124674-CZ

Before: GLEICHER, P.J., and WILDER and K. F. KELLY, JJ.

PER CURIAM.

In this action under the Open Meetings Act ("OMA"), MCL 15.261 *et seq*., plaintiffs[1] appeal by right the trial court's order granting defendant summary disposition. We affirm in part, reverse in part, and remand.

I. BASIC FACTS

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[1] "Plaintiffs," as used in this opinion, refers only to those plaintiffs-appellants involved in this appeal.

Defendant, Northville Township Board of Trustees, was involved in unrelated litigation with a developer, REIS-Northville L.L.C. (REIS), over the developer's plans for property located in defendant's township. Plaintiffs are citizens of defendant's township and had campaigned against certain aspects of REIS's proposed development. Eventually, defendant and REIS entered into a global settlement agreement regarding the dispute on July 30, 2008. Before the township approved the settlement, several public meetings were held for the purpose of considering the matter. Defendant held a special meeting on July 24, 2008, at 7:30 p.m., during which it approved the global settlement agreement with REIS by adopting Resolution 2008-104. Subsequently, another meeting was held at 8:00 a.m. on July 29, 2008, during which defendant approved the minutes of the July 24 meeting and also approved the resolution.

No citizens were present at either of these meetings, despite the controversial nature of REIS's development plans. Apparently, plaintiffs and the public had "no hint" that a settlement was "looming" and plaintiffs were surprised to learn through the media that defendant had settled the lawsuit. Consequently, plaintiffs brought the instant case, seeking to invalidate the global settlement agreement on the grounds that defendant violated that OMA by failing to give adequate notice of the July 24 and 29 meetings and by failing to properly record the events of the July 24 meeting. The parties filed cross-motions for summary disposition and the trial court entered judgment in defendant's favor. This appeal followed.

II. ANALYSIS

Plaintiffs argue that the trial court's grant of summary disposition in defendant's favor was erroneous because defendant allegedly (1) provided inadequate notice of the two meetings in violation of § 5(4), MCL 15.265(4), of the OMA; and (2) failed to keep accurate minutes of the July 24 meeting in violation of § 9(1), MCL 15.269(1), of the OMA. We review the trial court's ruling on a motion for summary disposition de novo. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). A motion brought under MCR 2.116(C)(10) is properly granted if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Hamade v Sunoco, Inc*, 271 Mich App 145, 153; 721 NW2d 233 (2006).

Further, to the extent that we must engage in statutory interpretation, our review is also de novo. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003). The rules of statutory construction require that courts give effect to the Legislature's intent. To do so, this Court first looks to the specific statutory language, which is presumed to intend the meaning that it plainly expresses. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). "If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997). If a statute is ambiguous, judicial construction is permitted. *Detroit City Council v Mayor of Detroit*, 283 Mich App 442, 449; 770 NW2d 117 (2009). A statute is ambiguous if one provision irreconcilably conflicts with another provision or when it is equally susceptible to more than one meaning. *Mayor of Lansing v Pub Serv Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004). Moreover, we interpret the requirements of the OMA broadly and its exemptions narrowly, in furtherance of the OMA's purpose. *Herald Co v Tax Tribunal*, 258 Mich App 78, 85; 669 NW2d 862 (2003).

A. PUBLIC NOTICE

We disagree with plaintiffs' argument that defendant did not provide adequate notice of the July 24 and 29 meetings. "[T]he purpose of the OMA is to promote governmental accountability by facilitating public access to official decision making and to provide a means through which the general public may better understand issues and decisions of public concern." *Kitchen v Ferndale City Council*, 253 Mich App 115, 125; 654 NW2d 918 (2002). In accordance with this purpose, the OMA requires that all decisions of a public body be made at meetings open to the public. MCL 15.263(1) and (2). Before holding a meeting, a public body must first provide public notice of the meeting, which must be posted at the public body's principal office and any other locations the public body deems appropriate. MCL 15.265(1); MCL 15.264(b). Further, except as otherwise provided, "for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting." MCL 15.265(4).

Here, there is no dispute that defendant, a township board, is a "public body," see MCL 15.262(a); *Ryant v Cleveland Twp*, 239 Mich App 430, 434; 608 NW2d 101 (2000), or that defendant's members participated in a special "meeting" on July 24 and July 29, 2008, see MCL 15.262(b). Rather, the issue is limited to whether defendant gave proper notice of those meetings pursuant to § 5(4), MCL 15.265(4). As noted, that section provides, in part: "for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting." This Court has indicated that the notice is simply to be posted at least "18 hours in advance" of the meeting. See *Arnold Transit Co v Mackinac Island*, 99 Mich App 266, 274-275; 297 NW2d 904 (1980).

In the instant matter, both notices were posted on bulletin boards on the first and second floors of defendant's township office at least 18 hours in advance of the special meetings. The notice for the 7:30 p.m. meeting on July 24 was posted at 1:00 p.m. on July 23, more than a day before the meeting was to be held. The notice for the 8:00 a.m. meeting on July 29 was first posted at 11:00 a.m. on July 28 and a corrected notice[2] was posted at 1:30 p.m. the same day—18 and ½ hours before the meeting was to commence. Clearly, in both instances, the notices were posted more than 18 hours before the meeting, consistent with the requirements of § 5(4), MCL 15.265(4). Further, while the township office was not accessible to the public overnight and only open for certain hours during the day, the notices were nonetheless posted for a time-period over the 18-hour time requirement.

Plaintiffs, however, argue that the phrase in § 5(4), MCL 15.265(4), "posted at least 18 hours before the meeting," means "posted at least 18 *business* hours before the meeting" or "posted *in a place accessible to the public for* at least 18 hours before the meeting." This position is unavailing. It is our view that § 5(4), MCL 15.265(4), is clear and unambiguous. It

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[2] The corrected notice was essentially the same as the first notice; the mistake concerned a clerical error on an agenda item.

simply requires that a public notice stating the date, time, and place of the meeting be posted at least 18 hours before the meeting. As we have indicated, defendant fulfilled that requirement. Plaintiffs' suggested interpretation of the provision reads additional requirements or limitations into the statute. Such a reading is contrary to principles of statutory interpretation. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) ("[This Court] may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself."); *Rusnak v Walker*, 273 Mich App 299, 305; 729 NW2d 542 (2006) ("[A court] cannot read restrictions or limitations into a statute that plainly contains none.").[3]

We find plaintiffs' related argument, that the term "public notice" necessarily requires the notice to be accessible for the entire 18 hours, to be similarly without merit. More specifically, it is plaintiffs' contention that, by definition, a "public notice" must be, and is inherently, accessible to the public at all times. We cannot adopt plaintiff's suggested definition of that term because it is contrary to its plain and ordinary meaning. The OMA does not define the terms "public," "notice," or "public notice." In such instances, this Court ascribes such terms their plain and ordinary meaning and may rely on dictionary definitions to give effect to the Legislature's intent. *Ryant*, 239 Mich App at 433-434. The word "public," as used to describe "notice," means "of, pertaining to, or affecting a . . . community as a whole." *Random House Webster's College Dictionary* (1997). Thus, the term "public notice," as used in § 5(4), MCL 15.265(4), does not inhere a specific time requirement of accessibility for which such a notice must be posted. Rather, the term "public notice" is merely a descriptive term of the type of notice that is to be posted, i.e., a notice pertaining to, or addressing, the public. In short, there is no time requirement inherent in the definition of "public notice," as plaintiffs' argument wrongly suggests.

Lastly, plaintiffs also rely on an opinion of the Attorney General in support of their contention that § 5(4), MCL 15.265(4), requires the notice to be publicly accessible for 18 hours. See OAG, 1979-1980, No. 5,724, p 840 (June 20, 1980). An opinion of the Attorney General is not precedentially binding, although it can be persuasive authority. *Indenbaum v Mich Bd of Med (After Remand)*, 213 Mich App 263, 274; 539 NW2d 574 (1995). Nonetheless, given the plain and unambiguous meaning of § 5(4), MCL 15.265(4), we are not persuaded to follow the Attorney General's interpretation.

While we are sympathetic to the conundrum pointed out by the partial dissent, § 4(b), MCL 15.264(b), states that "[a] public notice for a public body *shall* always be posted at its principal office . . . ." (Emphasis added.) Because we must read § 4(b), MCL 15.264(b), together with § 5(4), MCL 15.265(4), see *Wolverine Power Supply Coop, Inc v Dep't of Envtl Quality*, 285 Mich App 548, 558; 777 NW2d 1 (2009) (in construing a statute, this Court "must assume that every word has some meaning and . . . must give effect to every provision, if possible"), it is

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[3] We note that plaintiffs do not even argue that the statute is ambiguous, such that their interpretation of the statute should be permitted by judicial construction. *Rose Hill Ctr*, 224 Mich App at 32 (noting that judicial construction is not permitted if a statute is unambiguous).

evident that the posting of the notice at issue, which, the record shows, occurred at the township's principal office 18 hours before the meeting, fully complies with the OMA.

Because it is undisputed that defendant provided at least 18 hours' notice before each meeting, it did not violate § 5(4), MCL 15.265(4), of the OMA. Therefore, plaintiffs were not entitled to have the global settlement agreement invalidated under § 10(2), MCL 15.270(2). Accordingly, the trial court did not err by finding that defendant was entitled to judgment with respect to this aspect of plaintiffs' claim.

B. MEETING MINUTES

We agree with plaintiffs' argument that defendant violated § 9(1), MCL 15.269(1), of the OMA because the minutes of the July 24, 2008, meeting do not accurately reflect the decision made at that meeting.

Section 9(1), MCL 15.269(1), of the OMA governs minutes of a meeting. It provides in part:

> Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decision made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. . . . [MCL 15.269(1).]

Here, the minutes of the July 24th special meeting show the date, time, and place the meeting was held, the members present, the purpose for the closed session, the decision made, and the roll call votes. The item on the agenda was the REIS litigation. The minutes state that the purpose of the closed portion of the meeting was "to discuss with the township attorneys the litigation and settlement issues . . . ." Further, the minutes indicate that a decision was made and state, "[T]he township board hereby authorizes the Township Supervisor and Township Clerk to execute any appropriate documents, if presented as outlined, and recommended by the township attorney[.]" In her deposition, however, defendant's clerk testified that the settlement agreement with REIS was authorized at that meeting.

In our view, the recorded minutes do not adequately reflect what decision was made at the meeting. All that can be inferred from a reading of the minutes as a whole is that the supervisor and clerk were authorized to execute those documents presented and recommended by the attorney pertaining to litigation and settlement issues, if any were presented at all. What is not stated in the minutes is defendant's actual decision to settle the REIS litigation. This ultimate outcome is not even implied because nothing in the minutes indicates what documents the attorney had presented. And, although the documents presumably related to the "litigation and settlement issues," there is no indication whether such documents included mere recommendations or full or partial proposals. Accordingly, we conclude that defendant violated § 9(1), MCL 15.269(1), because the minutes do not reflect the actual decision taken at the July 24 meeting, i.e., to settle the pending REIS litigation. Therefore, the trial court erred by finding that defendant was in compliance with § 9(1), MCL 15.269(1), of the OMA.

Because the trial court did not find that § 9(1), MCL 15.269(1), was violated, it did not reach the question of the appropriate remedy. Appellate review is generally limited to issues actually decided by the trial court. *Allen v Keating*, 205 Mich App 560, 564-565; 517 NW2d 830 (1994). Accordingly, we remand this case to the trial court for consideration of what relief, if any, plaintiffs are entitled for the violation of § 9(1), MCL 15.269(1). On remand, the trial court shall also determine whether plaintiffs are entitled to recover any court costs or attorney fees in accordance with § 11(4), MCL 15.271(4), of the OMA.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly