

STATE OF MICHIGAN
COURT OF APPEALS

V.R. ENTERTAINMENT, DREAM NITE CLUB,
VICKASH MANGRAY, JEFF MANGRAY, and
REESE MANGRAY,

UNPUBLISHED
December 19, 2013

Plaintiffs-Appellants,

v

CITY OF ANN ARBOR, CITY COUNCIL OF
ANN ARBOR, CITY OF ANN ARBOR POLICE
DEPARTMENT, and MICHIGAN LIQUOR
CONTROL COMMISSION,

No. 311155
Washtenaw Circuit Court
LC No. 12-000357-NZ

Defendants-Appellees.

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In this dispute over the nonrenewal of a liquor license, plaintiffs appeal as of right the order granting summary disposition in favor of defendants on claims that defendants violated the Open Meetings Act (OMA), MCL 15.261 *et seq.*, violated procedural due process protections, and failed to proffer evidence sufficient to support the allegations leading to a liquor license renewal objection. On appeal, plaintiffs are only challenging the summary dismissal of the OMA and due process claims. We affirm.

The record reflects that fights, acts of violence, the carrying of weapons, and liquor law violations often occurred on the premises of Dream Nite Club, which is located in the City of Ann Arbor (city). Plaintiff V.R. Entertainment (VRE), doing business as Dream Nite Club, was owned and operated by plaintiffs Vickash, Jeff, and Reese Mangray, and it held a Class C liquor license. On February 23, 2012, Ann Arbor's Liquor License Review Committee (review committee) met and voted in favor of recommending nonrenewal of VRE's liquor license. On March 5, 2012, defendant Ann Arbor City Council (city council) resolved to accept the recommendation of the review committee. However, pursuant to city ordinance, it was necessary to conduct an administrative hearing before communicating any nonrenewal recommendation or renewal objection to defendant Michigan Liquor Control Commission (MLCC). To that end, a hearing was scheduled for March 19, 2012. On March 7, 2012, the city council provided VRE with notice of the renewal objection and the March 19th hearing date. In accordance with that notice, the administrative hearing was held on March 19, 2012.

The city presented substantial evidence at the four-hour hearing in support of the nonrenewal recommendation, introducing numerous witnesses and exhibits that established the history of the many disturbances and illegalities that had transpired at Dream Nite Club. Plaintiffs, represented by two attorneys, were given the full opportunity to cross-examine the city's witnesses, to challenge the exhibits, to make arguments, and to present witnesses. After completion of the hearing, the administrative hearing officer, who was also a member of the city council and review committee, found that there had been more than 162 calls for police assistance at Dream Nite Club in a three-year period. The hearing officer further found that the police reports concerning the Dream Nite Club included complaints of assaults, underage drinking, and large fights, some of which resulted in various injuries. The administrative hearing officer issued a recommendation that the city council adopt a resolution, to be forwarded to the MLCC, objecting to renewal of VRE's liquor license. On the evening of March 19, 2012, the same day as the hearing, the city council, by resolution, accepted and adopted the hearing officer's findings and recommendation. The city council then sent notification to the MLCC that it was formally objecting to the renewal of VRE's liquor license.

Plaintiffs initiated the present lawsuit on April 2, 2012, seeking only injunctive relief in an effort to protect VRE's liquor license. On April 17, 2012, plaintiffs amended their complaint, adding the OMA, due process, and evidentiary claims. On April 30, 2012, the MLCC held a hearing on the city's renewal objection. In a letter to VRE dated May 7, 2012, the MLCC first noted that the city had not withdrawn its renewal objection. The MLCC further indicated, "Since MCL 436.1501 requires approval by the local legislative body, and such approval is not currently on file with the [MLCC], your license was placed in escrow as of May 1, 2012, and will remain in escrow subject to the provisions in administrative rule R 436.1107." The trial court granted summary disposition in favor of defendants on June 6, 2012, finding that any claim for injunctive relief was moot given the MLCC's decision, that the city council's decision was not arbitrary and capricious, that plaintiffs received the required rudimentary due process, and that the OMA claim was not supported by the evidence. A separate federal action, alleging civil rights violations and asking for injunctive relief, had been filed by plaintiffs against defendants, which action regarded a prior city nuisance suit concerning the Dream Nite Club and touched on liquor license issues comparable to those here. The federal action was summarily dismissed on June 22, 2012. According to defendants, in January 2013, the escrowed liquor license was transferred to another establishment. In a reply brief, plaintiffs argue that an actual transfer had not occurred and that they were contesting any transfer of the liquor license.

On appeal, plaintiffs argue that they were not provided notice of the February 23, 2012, meeting conducted by the review committee that resulted in the nonrenewal recommendation, were not provided notice of the March 5, 2012, meeting conducted by the city council that resulted in a renewal objection resolution, were provided inadequate notice, just a couple of hours, with respect to the meeting on March 19, 2012, in which the city council adopted the hearing officer's recommendation, and were not given a reasonable opportunity to be heard at these meetings. Plaintiffs contend that these failures deprived them of their right to procedural due process and that the same failures also violated the OMA. Additionally, plaintiffs maintain that they were denied procedural due process because they were not provided an unbiased and impartial hearing officer and because the city had failed to promulgate evidentiary standards, procedural guidelines, or operating procedures.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013). Whether due process has been afforded is a constitutional question that is also reviewed de novo. *Id.* at 277-278. Likewise, legal issues concerning the OMA are reviewed de novo on appeal. *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998). In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A summary disposition motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a party's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Initially, we note that an issue is presented with respect to whether plaintiffs' claims were rendered moot by the MLCC's actions. Given that we conclude, for the reasons set forth below, that the trial court did not err in granting summary disposition as to the merits of plaintiffs' due process and OMA claims, we find it unnecessary to engage in any analysis or to issue a ruling regarding the mootness argument.

Our Supreme Court has recognized that individuals or entities seeking to renew a liquor license possess a property interest entitled to "rudimentary due process" protection. *Bundo v Walled Lake*, 395 Mich 679, 695-696; 238 NW2d 154 (1976). The *Bundo* Court articulated the requirements of rudimentary due process and added its own caveat:

"(i) timely written notice detailing the reasons for proposed administrative action; (ii) an effective opportunity to defend by confronting any adverse witnesses and by being allowed to present in person witnesses, evidence, and arguments; (iii) a hearing examiner other than the individual who made the decision or determination under review; and (iv) a written, although relatively informal, statement of findings."

We find it necessary to impose one modification upon this general requirement in order to better fit the needs and interests involved in this case. There should be no requirement that the hearing examiner be someone other than the members of the local legislative body. To require an independent examiner

would deprive the local body of discretion to rule on the matter. The local body itself may conduct the hearing. [*Id.* at 696-697 (citations omitted).¹]

In this case, it is undisputed that on March 7, 2012, the city sent plaintiffs a letter informing them that the review committee had received objections to renewal of VRE's liquor license. The letter detailed: (1) the substance of those objections with specific reference to the applicable provisions of the city code; (2) the date, time, and location of a hearing on the matter; (3) the city's intention to present evidence in support of the objections; and (4) plaintiffs' right to be present for the hearing, present evidence and witnesses, confront the city's witnesses, present arguments, and to be represented by an attorney. The letter also specified that the hearing officer's decision would be forwarded to the city council for final approval and thereafter forwarded to the MLCC. Based on this undisputed notice, there is no question of fact that plaintiffs received timely written notice detailing the reasons for the city's proposed administrative action, satisfying the first requirement of rudimentary due process. *Bundo*, 395 Mich at 696.

In regard to the second requirement, i.e., an effective opportunity to defend, plaintiffs, through counsel, were allowed to confront adverse witnesses and present witnesses, evidence, and arguments at the March 19, 2012 hearing, so this requirement was satisfied. *Id.* With respect to the standard third requirement of an independent hearing officer, plaintiffs complain that the hearing officer here was on the review committee and on the city council and that he effectively adopted his own findings and recommendation. However, as noted above, *Bundo* modified the requirement and specifically approved of the use of a hearing officer to conduct a hearing despite the fact that the officer sits on the local legislative body; this is exactly what occurred in the case at bar. *Id.* at 697. *Bundo*, which plaintiffs remarkably fail to even acknowledge on appeal, is the controlling precedent. Plaintiffs instead cite old United States Supreme Court precedent that was referred to and acknowledged in *Bundo*. Assuming an implicit argument by plaintiffs that our Supreme Court in *Bundo* exceeded its bounds, it is for that Court to address and resolve the matter, not us. Plaintiffs do not contend that the hearing officer was biased and prejudiced against them for reasons other than the fact that the hearing officer sat on the review committee and city council. Finally, plaintiffs were provided a written statement of findings prepared by the hearing officer, thereby satisfying the fourth requirement of rudimentary due process. *Id.* at 696.

In sum, plaintiffs were afforded rudimentary due process consistent with the Michigan Supreme Court's ruling in *Bundo* relative to liquor license renewal objections. Plaintiffs essentially ignore the March 7, 2012, notice of the renewal objection and hearing date, as well as the evidentiary hearing conducted on March 19, 2012, in accordance with the notice. They instead mistakenly assert that due process entitled them to personal notice and an opportunity to be heard specifically at the February 23, March 5, and March 19, 2012, meetings conducted by

¹ The Court also held "that courts may review arbitrary and capricious actions taken by local legislative bodies in recommending to the MLCC that liquor licenses not be renewed[.]" *Bundo*, 395 Mich at 704.

the review committee and city council. As explained, rudimentary due process required notice and an opportunity to be heard before the deprivation of plaintiffs' property interest in the liquor license, and plaintiffs were afforded those due process protections via the timely March 7th notice and the March 19th hearing. No more was required.

Lastly, plaintiffs maintain that the city violated due process by failing to promulgate evidentiary standards, procedural guidelines, or operating procedures to govern the meetings and hearing. We have acknowledged that "due process requires a local legislative body to establish some standards or guidelines which provide liquor licensees with notice of what criteria will result in the initiation of license non-renewal or revocation proceedings." *Roseland Inn, Inc v McClain*, 118 Mich App 724, 731; 325 NW2d 551 (1982). To this end, and overlooking the fact that plaintiffs failed to properly preserve this argument for appeal, the city enacted Ann Arbor Ordinance, § 9:79 (Annual renewal; license revocation, appeal and fees). This ordinance details the myriad reasons, including those invoked here, for which the city council may object to the renewal of a liquor license, plainly explaining the criteria on which the licensees and licenses will be evaluated. Section 9:79 also provides procedural details regarding notice and the administrative hearing, and it was cited and its provisions referenced in the March 7, 2012, notice to plaintiffs. The city had also adopted the "City Liquor Administrative Hearing Rules," which were referenced by the hearing officer at the commencement of the hearing. Overall, on the undisputed facts presented, plaintiffs were afforded due process and the trial court properly granted defendants' motion for summary disposition on the due process claim.

We also conclude that the trial court properly granted summary disposition as to plaintiffs' claim that, relative to the February 23, March 5, and March 19, 2012, meetings, defendants violated OMA by failing to provide notice and an opportunity to address a public body. Under OMA, when a public body meets, it must provide notice to the public. MCL 15.265(1). By statute, the notice must include "the public body's name, address, and telephone number, and it must be posted at its principal office and other appropriate locations." *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003), citing MCL 15.264. "A court has discretion to invalidate a decision made in violation of the OMA if it finds that violation impaired the rights of the public under the OMA." *Morrison v East Lansing*, 255 Mich App 505, 520; 660 NW2d 395 (2003), citing MCL 15.270(2). In *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 495; 618 NW2d 1 (2000), this Court observed:

A party seeking to invalidate a decision by a public body under the OMA must allege both a precise violation of the act and that the violation impaired the rights of the public. The mere recital in a complaint of language that the rights of the public were impaired, without specific references to facts supporting the alleged violation and public impairment, is insufficient. [Citations omitted.]

We initially conclude that plaintiffs failed to establish any documentary facts showing that the alleged violations impaired the rights of the public. Even plaintiffs' own rights were not impaired, given the administrative hearing that comported with due process protections.

Moreover, in compliance with OMA, on December 8, 2011, the city clerk posted notice of all the city council meetings scheduled for 2012, including the meetings held on March 5 and

March 19, 2012.² Plaintiffs do not contend that the information was not posted as shown by defendants. Instead, they claim that something more was required, that they were personally entitled to notice and that the notice needed to include information regarding the specific contents of the meetings. Plaintiffs' claims are clearly without merit because OMA does not require personal notice; it requires "public notice." MCL 15.265(1). In arguing that defendants' notice of the meetings needed to include particular agenda details, plaintiffs mistakenly rely on *Haven v City of Troy*, 39 Mich App 219, 224; 197 NW2d 496 (1972), a case wherein this Court described the more detailed notice that is required if a hearing is actually conducted at a meeting. However, *Haven* did not concern the provisions in OMA. Moreover, *Haven* applied only in situations in which a hearing was being conducted at a meeting and, consequently, it has no applicability to the present facts. Instead, under OMA, defendants were not required to provide any particular degree of detail as to the meeting's contents and there was no specific agenda format required. *Lysogorski*, 256 Mich App at 299 ("An agenda format is not required" under OMA). On the undisputed facts, the notice complied with OMA.

Claiming violations of OMA and the First Amendment, plaintiffs also contend that they were not provided an opportunity to address the city council. MCL 15.263(5) provides, "A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body." However, consistent with the plain statutory language, this Court has explained that a public body may impose rules limiting public comment without violating OMA. See, e.g., *Lysogorski*, 256 Mich App at 302. In Ann Arbor, the city council's rules provide two means of addressing the council during a meeting: a reserved public comment period at the beginning and a general public comment period at the end of the meeting. The minutes for the meetings on March 5th and March 19th confirm that these public comment periods were held and that, in fact, there were additional available time slots for speakers from the public. That plaintiffs chose not to avail themselves of these public comment periods does not establish either an OMA or First Amendment violation, especially as to the March 19th meeting, in which, as plaintiffs were fully aware, the city council would address the hearing officer's findings and recommendation regarding the liquor license renewal.

Lastly, in a very cursory argument, plaintiffs contend that the trial court prematurely granted summary disposition because further discovery would have benefited their position. We disagree. "Although incomplete discovery generally precludes summary disposition, summary disposition may nevertheless be appropriate if there is no disputed issue before the court or if further discovery does not stand a fair chance of finding factual support for the nonmoving party." *VanVorous v Burmeister*, 262 Mich App 467, 476-477; 687 NW2d 132 (2004). We fail

² Plaintiffs failed to plead in their complaint an OMA claim below based on the February 23 meeting of the review committee. Accordingly, plaintiffs' appellate claims regarding that meeting is not preserved for review. *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). We note that defendants assert that notice of the meeting on February 23 was also properly posted to the public, which plaintiffs do not deny in their appellate reply brief. Moreover, with respect to plaintiffs' claim of entitlement to personal notice under OMA, it is rejected for the same reasons set forth below relative to the March meetings.

to see how any further discovery could save plaintiffs' due process and OMA claims; the documentary evidence actually submitted conclusively established that plaintiffs received the required rudimentary due process and that there were no OMA violations that would support invalidation of the city's renewal objection. Plaintiffs contend that the depositions of city officials are needed to show irregularities in notices, which could establish that the Dream Nite Club "was being unfairly singled out for selective enforcement." Plaintiffs did present an argument below sounding in equal protection in the form of selective enforcement, but no such claim was ever pled in the complaint. And the trial court rejected the argument as finding no evidentiary support, yet plaintiffs do not even contend on appeal that the trial court erred in rejecting an equal protection, selective enforcement claim, let alone set forth an equal protection analysis. There is simply no merit to plaintiffs' argument that summary disposition was premature.

Affirmed. Having fully prevailed on appeal, defendants are awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello