

SUPREME COURT OF MICHIGAN

Title Office, Inc. v. Van Buren County Treasurer, 469 Mich. 516

676 N.W.2d 207 (2004) · No. 121077, 121078, 121177, 121178 · Decided March 9, 2004

SUMMARY

The Michigan Supreme Court held that electronic copies of property tax records requested from a county treasurer are subject to the fee schedule in the Transcripts and Abstracts of Records Act, rather than the Freedom of Information Act. The court concluded that an electronic reproduction qualifies as a “transcript” under the statute and overruled conflicting precedent from the Michigan Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Michael F. Cavanagh; Maura D. Corrigan; Robert P. Young, Jr.; Clifford W. Taylor; William H. Rehnquist; Stephen J. Markman; Elizabeth A. Weaver
JURISDICTION	Michigan
DECIDED	March 9, 2004
DOCKET	121077, 121078, 121177, 121178
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a circuit court order granting plaintiff's motion for summary disposition in consolidated mandamus actions concerning the fees counties could charge for electronic copies of property-tax records.
STANDARD OF REVIEW	De novo review of the grant or denial of summary disposition and of questions of statutory interpretation.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion; binding precedent in Michigan.
PARTIES	Van Buren County Treasurer, Allegan County Treasurer, Branch County Treasurer, Hillsdale County Treasurer, Ionia County Treasurer, Jackson County Treasurer, Kalamazoo County Treasurer, Livingston County Treasurer v. Title Office, Inc.

TOPICS

statutory interpretation

plain meaning rule

municipal law

real estate

PRACTICE AREAS

statutory interpretation

municipal law

public records

real estate records

QUESTIONS PRESENTED

1. Whether fees for electronic copies of county treasurers' property-tax records are governed by the Freedom of Information Act or the Transcripts and Abstracts of Records Act.
2. Whether an electronic copy of a property-tax record constitutes a "transcript" under the Transcripts and Abstracts of Records Act.
3. Whether *Oakland Co. Treasurer v. Title Office, Inc.* should be followed.

HOLDINGS

1. The TARA fee schedule, rather than the FOIA fee provisions, governs fees for copies of property-tax records because TARA specifically provides the amount of the fee for copies of records on file in a county treasurer's office.
2. An electronic copy of property-tax records is a "transcript" within the meaning of TARA, and its reproduction fees are governed by TARA.
3. *Oakland Co. Treasurer v. Title Office, Inc.* is overruled because it improperly limited TARA to paper or written copies.

KEY QUOTATIONS

"The unambiguous language of both statutes leads us to conclude that the fees are to be computed according to the fee schedule provided in TARA." (676 N.W.2d at 207)

"'Transcript,' as used in the statute, is a much broader term, intended to apply to any reproduction of a record on file in the treasurer's office." (676 N.W.2d at 211)

"An electronic copy of property tax records qualifies as a 'transcript' for purposes of TARA." (676 N.W.2d at 211)

FACTUAL BACKGROUND

On February 27, 1998, Title Office requested electronic copies of Van Buren County's 1996 and 1997 property-tax and delinquent-tax records. The county treasurer calculated the copying fee under the Transcripts and Abstracts of Records Act and estimated the charge at \$26,700. Title Office made similar requests in other counties and challenged the use of the TARA fee schedule rather than the Freedom of Information Act schedule.

PROCEDURAL HISTORY

Title Office sought mandamus relief in several counties, asking the courts to require the counties to calculate copying fees under the Freedom of Information Act rather than the Transcripts and Abstracts of Records Act.

The circuit court granted plaintiff's motion for summary disposition. The Court of Appeals affirmed, relying on *Oakland Co. Treasurer v. Title Office, Inc.* The Michigan Supreme Court consolidated the defendants' applications for leave to appeal, granted leave, reversed the Court of Appeals, and overruled *Oakland Co. Treasurer*.

DISPOSITION

reversed

CASES CITED

- *American Federation of State, County and Municipal Employees v. Detroit*, 468 Mich. 388, 398, 662 N.W.2d 695 (2003)
- *Omelenchuk v. City of Warren*, 466 Mich. 524, 527, 647 N.W.2d 493 (2002)
- *In re MCI*, 460 Mich. 396, 411, 596 N.W.2d 164 (1999)
- *Stanton v. Battle Creek*, 466 Mich. 611, 617, 647 N.W.2d 508 (2002)
- *Oakland Co. Treasurer v. Title Office, Inc.*, 245 Mich. App. 196, 627 N.W.2d 317 (2001)

OPINION

CAVANAGH, J.

676 N.W.2d 207 (2004) *The TITLE OFFICE, INC., Plaintiff-Appellee, v. VAN BUREN COUNTY TREASURER, Defendant-Appellant, and Allegan County Treasurer, Branch County Treasurer, Hillsdale County Treasurer, Ionia County Treasurer, Jackson County Treasurer, Kalamazoo County Treasurer, and Livingston County Treasurer, Defendants.*

The Title Office, Inc., Plaintiff-Appellee, v. Allegan County Treasurer, Branch County Treasurer, Hillsdale County Treasurer, Ionia County Treasurer, Jackson County Treasurer, Kalamazoo County Treasurer, and Livingston County Treasurer, Defendants-Appellants, and Van Buren County Treasurer, Defendant. Docket Nos. 121077, 121078, 121177, 121178, Calendar No. 9.

Supreme Court of Michigan. Argued December 10, 2003. Decided March 9, 2004. *208 Warner Norcross & Judd, L.L.P. (by Daniel R. Gravelyn and Christine E. Gale), Grand Rapids, for the plaintiff. Kreis, Enderle, Callander & Hudgins, P.C. (by Thomas G. King and Stacy Soper-Stine) Kalamazoo, for defendant Van Buren County Treasurer. Cohl, Stoker, Toskey & McGlinchey, P.C. (by Bonnie G. Toskey and Timothy M. Perrone), Lansing, for defendants treasurers of the counties of Allegan, Hillsdale, Ionia, Jackson, Kalamazoo, and Livingston.

Dykema Gossett. P.L.L.C. (by Sandra M. Cotter, Daniel J. Oginsky, and Julie A. Karkosak), Lansing, for amicus curiae the Michigan Association of County Treasurers. McClelland & Anderson, L.L.P. (by Gregory L. McClelland and Marc D. Matlock), Lansing, for amicus curiae, the Association of Realtors® **OPINION** MICHAEL F. CAVANAGH, J. We granted leave to appeal

in this case to determine whether the fees for copies of property tax records requested from a county treasurer are computed according to the fee schedule provided in the Freedom of Information Act (FOIA), M.C.L. § 15.231 et seq., or that provided in the transcripts and abstracts of records act (TARA), M.C.L. § 48.101.

The unambiguous language of both statutes leads us to conclude that the fees are to be computed according to the fee schedule provided in TARA. I. FACTS AND PROCEEDINGS On February 27, 1998, plaintiff, The Title Office, Inc., requested an electronic copy of Van Buren County's property tax records and delinquent tax records for 1996 and 1997.[1] Defendant, Van Buren *209 County Treasurer, used the TARA fee schedule, M.C.L. § 48.101, to calculate the fee for providing the copies and provided an estimate of \$26,700.

Plaintiff filed mandamus actions in several counties asking the courts to direct the counties to compute the fee under FOIA, rather than TARA. The cases against eight county treasurers were consolidated in Livingston County.

The circuit court granted plaintiffs motion for summary disposition. Defendants filed two appeals with the Court of Appeals, which that Court consolidated.[2] Because it was bound by *Oakland Co. Treasurer v. Title Office, Inc.*, 245 Mich.App. 196, 627 N.W.2d 317 (2001), the Court of Appeals affirmed. *Title Office, Inc. v. Van Buren County Treasurer*, 249 Mich.App.

322, 643 N.W.2d 244 (2002). The Court of Appeals panel requested that the Chief Judge convene a special conflict panel to address the issue, but the request was denied. 249 Mich.App. 805, 642 N.W.2d 705 (2002). Defendant, Van Buren County Treasurer, filed a timely application for leave to appeal.

The remaining defendants filed a delayed application for leave to appeal. We consolidated the applications and granted leave.[3] II. Standard of Review The trial court granted plaintiff's motion for summary disposition on the basis of its interpretation of FOIA and TARA. This Court reviews de novo the grant or denial of summary disposition. *American Federation of State, Co. and Municipal Employees v. Detroit*, 468 Mich. 388, 398, 662 N.W.2d 695 (2003).

Similarly, questions of statutory interpretation are reviewed de novo. *Omelenchuk v. City of Warren*, 466 Mich. 524, 527, 647 N.W.2d 493 (2002). III. DISCUSSION The issue in this case is one of statutory construction.

We must determine whether the fees for copies of property tax records are to be computed according to the fee schedule in FOIA or TARA. "The primary goal of statutory interpretation is to give effect to the intent of the Legislature."

In *re MCI*, 460 Mich. 396, 411, 596 N.W.2d 164 (1999). To discern the legislative intent, this Court must first examine the language of the statute itself. If the statute is unambiguous it must be

enforced as written. Id. Section 4 of FOIA sets forth the fees a municipality may charge a party requesting public records: (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of the record.

Subject to subsections (3) and (4), the fee shall be limited to the actual mailing costs, and to the actual incremental costs of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in Section 14. [M.C.L. § 15.244.] A search for a *210 public record may be conducted or copies of the public record may be furnished without charge or a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

A public record search shall be made and a copy of public records shall be furnished without charge for the first \$20 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating the individual is then receiving public assistance or if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. * * * (3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with the request under this act.

Fees shall be uniform and shall not be dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of the search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in Section 14 unless failure to charge a fee would result in unreasonably high cost to the public body because of the nature of the request in the particular interest and the public body specifically identifies the nature of these unreasonably high costs.

A public body shall establish and publish procedures and guidelines to implement this subsection. [M.C.L. § 15.234.] Subsection 4 excludes certain records: This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

[M.C.L. § 15.234(4).] Thus, FOIA makes it clear that if TARA is "an act or statute specifically authorizing the sale" of public records or if TARA specifically provides the amount of the fee for providing a copy of the public record, the FOIA fee provisions do not apply. M.C.L. § 15.234(4). It is clear from the text of TARA that it specifically provides the amount of the fee for providing a copy of "any paper or record on file in the treasurer's office."

M.C.L. § 48.101(1). TARA provides: (1) A county treasurer shall make upon request a transcript of any paper or record on file in the treasurer's office for the following fees: (a) For an abstract of taxes on any description of land, 25 cents for each year covered in the abstract. (b) For an abstract with statement of name and residence of taxpayers, 25 cents per year for each description of land covered by the abstract. (c) For list of state tax lands or state bids, 25 cents for each description of land on the list. (d) For 1 copy of any paper or document at the rate of 25 cents per 100 words. (e) For each certificate, 25 cents.

[M.C.L. § 48.101.] Because TARA specifically provides the amount of the fee for providing a copy of a public record it falls within *211 M.C.L. § 15.234(4), and the FOIA fee provisions do not apply. But plaintiff argues that each electronic copy it requested is not a "transcript" of the property tax records and, therefore, TARA is not applicable and the FOIA fee provisions should govern.

We disagree. TARA does not define "transcript." Accordingly, we are required to give the term its plain and ordinary meaning. When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate. *Stanton v. Battle Creek*, 466 Mich. 611, 617, 647 N.W.2d 508 (2002). At the time of the enactment of TARA in 1895, the term "transcript" was defined in *Bouvier's Law Dictionary* (New ed. by Rawle, 1897), as "[a] copy of an original writing or deed."

Likewise, *Webster's International Dictionary* (1890), defined "transcript" as: 1. That which has been transcribed; a writing composition consisting of the same words as the original; a written copy. 2. A copy of any kind; an imitation.

We believe the Legislature intended this ordinary meaning of "transcript" at the time of the enactment of TARA to apply, rather than the strained definition plaintiff urges. Plaintiff's argument is based on its assertion that TARA governs only written or paper copies. Plaintiff attempts to draw a line at some point during the twentieth century by excluding all technological advances postdating the copy machine from the definition of "transcript."

Plaintiff argues that photocopies are transcripts, but electronic copies are not. This argument disregards many of the technological advances made in the last century and ignores the fact that TARA does not contain the term "written," nor does it refer to "paper copies."

We decline to adopt the reasoning of the Court of Appeals in *Oakland Co. Treasurer v. Title Office, Inc.*, 245 Mich.App. 196, 627 N.W.2d 317 (2001), and we decline to confine TARA to paper or written copies. "Transcript," as used in the statute, is a much broader term, intended to apply to any reproduction of a record on file in the treasurer's office. An electronic copy of property tax records qualifies as a "transcript" for purposes of TARA.

Plaintiff has clearly requested a "transcript" of records on file in the treasurer's office. Because Oakland Co Treasurer conflicts with this holding, it is overruled. Rather than examining the plain meaning of "transcript," the panel in Oakland Co Treasurer based its holding on the notion that the 1895 Legislature did not contemplate electronic copies when enacting TARA.

IV. CONCLUSION We hold that electronic copies of property tax records are "transcripts" within the meaning of TARA and, thus, the fees for their reproduction are those delineated in TARA, not FOIA. We reverse the decision of the Court of Appeals. NOTES [1] At the same time, plaintiff made similar requests in the counties of Allegan, Branch, Hillsdale, Ionia, Jackson, Kalamazoo, and Livingston.

[2] The Van Buren County Treasurer filed one appeal and the remaining county treasurers filed the other. [3] The order granting leave directed the parties to address the meaning, at the time of enactment, of "transcript" in 1895 P.A. 161 as amended, M.C.L. § 48.101, and whether by use of "transcript of any paper or record on file" the Legislature originally intended the act to cover subsequently developed means of document reproduction.

[468 Mich. 881, 661 N.W.2d 231 (2003).]