

No. 1-10-3692

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FIRST DIVISION
FILED: JUNE 27, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAREN BERGE,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Plaintiff-Appellant)	COOK COUNTY
)	
v.)	No. 09 CH 27729
)	
DAVE HEILMANN, as Mayor of the)	
Village of Oak Lawn; and THOMAS M.)	
DUHIG, JERRY HURKERS, ALEX G.)	
OLEJNICZAK, THOMAS E. PHELAN, CAROL)	
QUINLAN, and ROBERT J. STREIT, as)	
Trustees of the Village of Oak Lawn,)	HONORABLE
)	WILLIAM O. MAKI,
Defendants-Appellees.)	JUDGE PRESIDING.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

Held: Circuit court did not err in ruling that the defendants did not violate the Open Meetings Act.

The plaintiff, Karen Berge, appeals from the circuit court's order entering judgment against her on her amended complaint against the defendant officers of the Village of Oak Lawn (Village): Dave Heilman, Thomas Duhig, Jerry Hurkers, Alex

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Olejniczak, Thomas Phelan, Carol Quinlan, and Robert Streit. On appeal, the plaintiff argues that the circuit court erred in concluding that the defendants did not violate the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2008)) and that the circuit court denied her due process by refusing to allow her or her counsel access to recordings of a closed meeting held by the defendants. For the reasons that follow, we affirm the judgment of the circuit court.

In her two-count amended complaint, the plaintiff alleged that the Village Board (Board) held a closed executive session during its July 28, 2009, meeting; that the Board discussed budgetary matters, including laying off employees pursuant to recommendations contained in a "Balanced Game Plan" document prepared by the village manager; and that the Board actually voted during closed session to lay off over 30 Village employees. The complaint further alleged that, after the meeting, the Village sent notices to several employees to inform them that they would be fired as of August 31, 2009. The complaint thus alleged that the defendants violated the Open Meetings Act by discussing these matters in a closed meeting and by taking a final action in a closed meeting.

To her amended complaint, the plaintiff attached a copy of the "Game Plan" document as well as a copy of the agenda for the Board's July 28 meeting. The Game Plan document is a chart listing

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budgetary savings the Village could achieve through various methods, such as refinancing bonds and altering employee health care plans. The meeting agenda contains the following relevant agenda item:

"Executive Session *** for the purpose of 1.) Discussing collective negotiating matters 2.) Discussing pending litigation 3.) Discussing salary schedules for one or more classes of employees 4.) Discussing information regarding the appointment, employment, compensation, discipline, performance or dismissal of a specific employee or employees of the Village."

In their motion to dismiss the plaintiff's amended complaint, the defendants asserted, among other things, that the Board used the closed session to discuss matters exempt from Open Meetings Act requirements, because any budgetary discussions were incidental to the primary purpose of the closed meeting, to discuss employment actions. The motion also argued that the Board undertook no final action during its closed meeting. The circuit court denied the motion to dismiss, as well as the defendants' later motion to reconsider.

In the meantime, the plaintiff filed a motion to compel the defendants to produce any records of the July 28 closed meeting for *in camera* review. In their response to the motion (filed by new

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counsel after their prior counsel withdrew), the defendants asserted that the closed meeting was held in part to discuss the Village's collective bargaining strategy to "send certain employees notice of layoff letters in the hopes of receiving concessions from the unions and other Village employees as part of *** ongoing negotiations with the unions." The defendants thus asserted that the participants in the meeting did not discuss actual layoffs, but instead a "negotiation tactic" of sending layoff notices. The defendants further noted that subsequent negotiations actually averted any layoffs. The defendants also asserted that any votes taken during the meeting were informal polls to provide direction to the village manager, not final layoff actions.

A copy of the layoff notice letter appears as an exhibit to another motion in the record. The letter provides as follows, in pertinent part:

"This is to notify you that your employment will be terminated on *** August 31, 2009.

In response to [budget difficulties], the Village is taking steps to ensure a balanced budget ***. This requires the Village to eliminate positions *** and/or achieve salary and benefit concessions from every labor group. ***

*** It is my hope that every labor group will offer significant concessions and the Village will be able to recall

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many employees. ***"

The circuit court later agreed to conduct an *in camera* review of audio tapes the defendants produced of the closed session. Following its review of the audio recordings, the circuit court entered an order finding that the closed meeting fell within Open Meeting Act exceptions for collective negotiating and litigation discussions, and that no final action was taken during the meeting. Accordingly, the circuit court denied the plaintiff any relief and dismissed her complaint. In open court, the circuit court also denied plaintiff's counsel's request for an opportunity to review the audio recordings. The plaintiff then filed this timely appeal.

While this appeal was pending, the plaintiff filed a motion, unopposed by the defendants, to have the audio recordings filed under seal in this court to facilitate our review of the circuit court's decision. We granted that motion and have reviewed the recordings, which inform our decision even though we do not discuss their contents.

The plaintiff's first argument on appeal is that the circuit court erred in concluding that the topics discussed during the closed meeting were excepted from the Open Meetings Act. The Open Meetings Act, put in place "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly," (5 ILCS 120/1 (West 2008)), requires that "[a]ll meetings

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of public bodies shall be open to the public unless excepted" in subsection 2(c) of the Act (5 ILCS 120/2(a) (West 2008)). Subsection 2(c) of the Act allows public bodies to hold closed meetings for, among other things, "[c]ollective negotiating matters between the public body and its employees or their representatives." 5 ILCS 120/2(c)(2) (West 2008).

Based on our review of the tapes filed under seal, we agree with the circuit court's conclusion that the matters discussed at the meeting fell within exceptions to the Open Meetings Act. To the extent that the plaintiff argues that these discussions also included budgetary or other non-excepted matters, we agree with the defendants that those matters were secondary to, and inextricably woven into, the primary, excepted topics the Board discussed. As this court has explained, "[i]t is to be expected that during the discussion of a given topic, other related topics germane to the primary topic may be brought into discussion. In instances when a related topic plays an integral part in the discussion of the original topic to be considered in closed session, business practicality and efficiency dictate that the related topic be discussed along with the primary topic." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 177, 534 N.E.2d 434 (1989). The tangential relationship between the discussed topics and the Village budget does not destroy the confidentiality of the Board's discussion.

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The plaintiff's second argument on appeal is that the circuit court erred in concluding that the Board did not take a final action during its closed meeting. Section 2(e) of the Open Meetings Act states that "[n]o final action may be taken at a closed meeting." 5 ILCS 120/2(e) (West 2008). Again, after reviewing the tapes filed under seal, we agree with the circuit court that no improper final actions were taken during the meeting.

The plaintiff's third argument on appeal is that, by refusing to allow her or her counsel to hear the closed meeting recording under a protective order, the circuit court violated her right to due process. However, the defendants correctly observe in their brief, and the plaintiff does not dispute in her reply brief, that she did not raise this due process objection to the circuit court. The plaintiff has therefore forfeited her due process argument, and we will not consider it further. *E.g., McLaughlin v. Sternberg Lanterns, Inc.*, 395 Ill. App. 3d 536, 545, 917 N.E.2d 1065 (2009).

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.