

STATE OF MICHIGAN
IN THE SUPREME COURT

SUSAN BISIO,

Plaintiff-Appellant,

v.

THE CITY OF THE VILLAGE OF
CLARKSTON,

Defendant-Appellee

Supreme Court Case No. 158240

Court of Appeals Docket No. 335422

Oakland County Circuit Court
Case No. 15-150462-CZ

**DEFENDANT-APPELLEE THE CITY OF THE VILLAGE OF CLARKSTON'S
OBJECTIONS TO PLAINTIFF-APPELLANT'S BILL OF COSTS**

Defendant-Appellee The City of the Village of Clarkston, pursuant to MCR 7.319, objects to Plaintiff-Appellant Susan Bisio's Bill of Costs because Ms. Bisio did not prevail on her arguments before this Court. Additionally, and/or alternatively, this Court should order that costs not be allowed. In support of this objection, Clarkston states as follows:

1. MCR 7.319 allows reasonable identified costs incurred in the Supreme Court to be taxed by the "prevailing party."
2. In this appeal, Ms. Bisio argued that Clarkston wrongfully denied her Freedom of Information Act (FOIA) request relating to certain documents in the file of the city attorney, a private attorney.
3. Ms. Bisio argued that the city attorney was an agent of Clarkston and that documents in the possession of the city attorney, as Clarkston's agent, were public records subject to disclosure in response to Ms. Bisio's FOIA request to Clarkston.

4. Clarkston argued that common law agency principles did not apply to FOIA for the purpose of determining whether the documents of the city attorney were public records subject to FOIA disclosure by Clarkston.

5. The Supreme Court majority did not accept Ms. Bisio's argument regarding agency – her principal argument at each phase of this case.

6. Ms. Bisio repeatedly conceded that the city attorney was not a public body.

7. Contrary to Ms. Bisio's position, the Supreme Court majority concluded that the city attorney is a public body.

8. The Supreme Court majority reach this result based on arguments raised by an amicus brief. The court did not include this issue in the order granting leave, and neither party had an opportunity to respond to the argument raised by amicus.

9. Moreover, the Supreme Court majority opinion acknowledges that

- that “plaintiff’s argument . . . focused on MCL 15.232(h)(iii) rather than MCL 15.232(h)(iv),” and
- that the Supreme Court majority was reviewing an unpreserved issue. [Sup Ct Op at 14, n 12]

10. For these reasons, Ms. Bisio is not the prevailing party for purposes of MCR 7.319 and costs should not be taxed against Clarkston.

11. Additionally, and/or alternatively, given the circumstances described above, this Court should order, pursuant to MCR 7.319(B), that costs not be taxed. This is particularly so given that a public question (involving FOIA) is involved. See e.g., *Charles Featherly Construction Co v Property Development Group, Inc*, 400 Mich 198; 253 NW2d 643 (1977).

WHEREFORE Defendant-Appellee The City of the Village of Clarkston respectfully asks that this Honorable Court sustain Defendant's objection to Plaintiff-Appellant Susan Bisio's Bill of Costs; enter an order that costs not be allowed; and award all other relief that is just and equitable.

Respectfully submitted,

KERR, RUSSELL AND WEBER, PLC

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