

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| LOOK AHEAD AMERICA, ET AL. | : | JUDGES: |
| | : | Hon. Patricia A. Delaney, P.J. |
| Plaintiffs-Appellants | : | Hon. Craig R. Baldwin, J. |
| | : | Hon. Andrew J. King, J. |
| -vs- | : | |
| | : | |
| STARK COUNTY BOARD OF ELECTIONS, ET AL. | : | Case No. 2022-CA-00152 |
| | : | |
| Defendants-Appellees | : | <u>OPINION</u> |

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2021-CV-00702

JUDGMENT: Affirmed

DATE OF JUDGMENT: July 19, 2023

APPEARANCES:

For Plaintiffs-Appellants

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King, J.

{¶ 1} Plaintiffs-Appellants, Look Ahead America and Merry Lynne Rini, appeal the October 20, 2022 judgment of the Court of Common Pleas of Stark County, Ohio, entering judgment for Defendants-Appellees, Stark County Board of Elections and each of the individual board members, and dismissing the complaint. We affirm the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 18, 2021, appellants filed a complaint against Stark County Board of Elections and each individual board member alleging violations of the Open Meetings Act (hereinafter "OMA"). The meetings pertained to the purchase of new voting equipment from Dominion Voting Systems. Appellants complained about four meetings held in executive session: December 9, 2020, and January 6, February 9, and March 15, 2021. On March 26, 2021, appellees approved a motion to use Dominion as the vendor for the voting equipment and to request the Stark County Board of County Commissioners to purchase the property. Appellants claimed appellees failed to indicate the executive sessions were necessary because the "premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest." They also claimed public statements made by the chairman indicated certain discussions and determinations made in executive session should have been made in a public session. Appellants sought in part a declaration that appellees' decision to purchase the Dominion voting equipment was invalid.

{¶ 3} On May 27, 2021, appellants filed an amended complaint adding Stark County Board of Commissioners and Dominion Voting Systems as defendants. On June 29, and July 2, 2021, respectively, Commissioners and Dominion filed Civ.R. 12(B)

motions to dismiss. By judgment entry filed August 20, 2021, the trial court granted the motions, finding the complaint failed to state a claim upon which relief can be granted and dismissed the amended complaint against Commissioners and Dominion. The amended complaint proceeded as to appellees.

{¶ 4} On August 4, 2022, the trial court issued a lengthy pretrial order regarding the scope of executive sessions under R.C. 121.22(G)(2) and the interpretation of the statute. The trial court found the conditional language of the statute ("if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest") did not apply to purchases of property for public purposes. The trial court found the dispute centered on whether appellees "properly convened executive sessions '[t]o consider the purchase of property for public purposes' under R.C. 121.22(G)(2)." August 4, 2022 Pretrial Order at 14. The trial court concluded appellants were not "permitted to undertake a 'full and unlimited inquiry' into all matters discussed during the executive sessions. Such evidence is irrelevant to any claim pending in this case as it would not tend to prove or disprove any fact that is of consequence to the determination of the action." *Id.* at 15.

{¶ 5} A bench trial commenced on August 8, 2022. The trial court limited appellants' inquiry consistent with the pretrial order. At the conclusion of appellants' case, appellees moved for a directed verdict. The trial court treated the motion as an involuntary dismissal under Civ.R. 41(B)(2) and granted the motion, journalizing its decision in a judgment filed October 20, 2022. The trial court found appellees "entered into the four executive sessions for a permissible and valid purpose (the purchase of property for public purposes), and that each of the executive sessions was consistent with that purpose and related specifically to the topic that was announced in the motion which

authorized the executive session." October 20, 2022 Judgment at 14. The trial court dismissed the complaint.

{¶ 6} Appellants filed an appeal with the following assignments of error:

I

{¶ 7} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ENTERING *JUDGMENT FOR DEFENDANTS* WHEREBY, PURSUANT TO CIV.R.41(B)(2), IT DISMISSED THE *COMPLAINT*." (EMPHASIS SIC.)

II

{¶ 8} "THROUGHOUT THE COURSE OF TRIAL, THE TRIAL COURT COMMITTED REVERSIBLE ERROR THROUGH THE EXCLUSION OF RELEVANT EVIDENCE AND PROHIBITING CROSS-EXAMINATION THEREON, WHEN SUCH EXCLUSION WAS PREMISED UPON AN ERRONEOUS CONSTRUCTION OF THE OPEN MEETINGS ACT THAT CONCLUDED A PUBLIC BODY MAY LEGALLY CONDUCT MEETINGS IN EXECUTIVE SESSIONS UNDER R.C. 121.22(G)(2) FOR THE "PURCHASE OF PROPERTY FOR A PUBLIC PURPOSE" EVEN WHEN THE PURCHASE OF SUCH PROPERTY WOULD BE UNDERTAKEN BY A COMPLETELY DIFFERENT PUBLIC BODY."

III

{¶ 9} "PURSUANT TO A *PRETRIAL ORDER* AND THROUGHOUT THE COURSE OF TRIAL, THE TRIAL COURT COMMITTED REVERSIBLE ERROR THROUGH THE EXCLUSION OF RELEVANT EVIDENCE AND PROHIBITING CROSS-EXAMINATION THEREON, WHEN SUCH EXCLUSION WAS PREMISED UPON AN ERRONEOUS CONSTRUCTION OF THE OPEN MEETINGS ACT THAT CONCLUDED A PUBLIC BODY MAY LEGALLY CONDUCT MEETINGS IN EXECUTIVE SESSIONS

UNDER R.C. 122(G)(2) FOR THE "PURCHASE OF PROPERTY FOR A PUBLIC PURPOSE" WITHOUT THE ADDITIONAL STATUTORY LIMITATION THAT SUCH EXECUTIVE SESSIONS ARE LIMITED TO INSTANCES WHEN THE "PREMATURE DISCLOSURE OF INFORMATION WOULD GIVE AN UNFAIR COMPETITIVE OR BARGAINING ADVANTAGE TO A PERSON WHOSE PERSONAL, PRIVATE INTEREST IS ADVERSE TO THE GENERAL PUBLIC INTEREST." (EMPHASIS SIC.)

IV

{¶ 10} "PURSUANT TO A *PRETRIAL ORDER* AND THROUGHOUT THE COURSE OF THE BENCH TRIAL, THE TRIAL COURT COMMITTED REVERSIBLE ERROR THROUGH THE EXCLUSION OF RELEVANT EVIDENCE AND PROHIBITING CROSS-EXAMINATION THEREON, WHEN SUCH EXCLUSION WAS PREMISED UPON AN ERRONEOUS MISTAKE OF LAW THAT DECREED AS IRRELEVANT EVIDENCE GOING TO THE SPECIFIC DISCUSSIONS OR ACTUAL DECISIONS MADE IN EXECUTIVE SESSIONS HELD DURING THE COURSE OF MEETINGS OF A PUBLIC BODY WHEN THE CLAIMS BROUGHT UNDER THE OPEN MEETINGS ACT CHALLENGED THE LEGALITY OF THE SPECIFIC DISCUSSIONS AND THE ACTUAL DECISIONS MADE IN THE EXECUTIVE SESSIONS." (EMPHASIS SIC.)

V

{¶ 11} "PURSUANT TO A *PRETRIAL ORDER* AND THROUGHOUT THE COURSE OF THE BENCH TRIAL, THE TRIAL COURT COMMITTED REVERSIBLE ERROR THROUGH THE EXCLUSION OF RELEVANT EVIDENCE AND PROHIBITING CROSS-EXAMINATION THEREON, WHEN SUCH EXCLUSION WAS PREMISED UPON AN ERRONEOUS MISTAKE OF LAW THAT DECREED EVIDENCE GOING TO THE SPECIFIC DISCUSSIONS OR ACTUAL DECISIONS MADE IN EXECUTIVE

SESSIONS HELD DURING THE COURSE OF MEETINGS OF A PUBLIC BODY WERE PROTECTED AS CONFIDENTIAL OR PRIVILEGED INFORMATION." (EMPHASIS SIC.)

VI

{¶ 12} "PURSUANT TO A *PRETRIAL ORDER* AND THROUGHOUT THE COURSE OF THE BENCH TRIAL, THE TRIAL COURT COMMITTED REVERSIBLE ERROR THROUGH THE EXCLUSION OF RELEVANT EVIDENCE AND PROHIBITING CROSS-EXAMINATION THEREON, SAID ERROR CONSTITUTING CUMULATIVE ERROR." (EMPHASIS SIC.)

{¶ 13} For ease of analysis, we will address the assignments of error out of order. We note, as appellees do in their brief at 2, appellants' brief "contains an outline of arguments completely unmoored from the assignments of error." We will address appellants' arguments under the closest corresponding assignment of error.

II

{¶ 14} In their second assignment of error, appellants claim the trial court erred in finding appellees could enter into executive session to discuss the purchase of property for a public purpose even though a different public body (Stark County Commissioners) would be purchasing the property. We disagree.

{¶ 15} The fact that the Stark County Commissioners is the contracting authority does not affect appellees' right to enter into executive session because action by appellees is necessary to effectuate the purchase.

{¶ 16} R.C. 122.22(G)(2) does not limit executive sessions to the purchase of property only when that public body is the statutory contracting authority. Here, R.C. 3506.03 contemplates, among other processes, that a board of elections makes a

recommendation to the board of commissioners regarding the purchase of voting equipment. That recommendation or similar board of elections action is a statutory prerequisite for the board of commissioners to purchase the voting equipment. The statute also makes clear that the board of commissioners has no discretion to deviate from the equipment recommended or approved by the board of elections. In such cases where the General Assembly delegates portions of the authority to purchase property among different public bodies, each has the authority to enter into executive session to the extent necessary to further the purchase.

{¶ 17} Assignment of Error II is denied.

III

{¶ 18} In their third assignment of error, appellants claim the trial court erred in its interpretation of R.C. 121.22(G)(2). We disagree.

{¶ 19} R.C. 121.22 governs open meetings. Subsection (A) states: "This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." Subsection (G)(2) states in pertinent part:

(G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(2) To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of

unneded, obsolete, or unfit-for-use property in accordance with section 505.10 of the Revised Code, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

{¶ 20} Appellants argue the property purchasing clause of subsection (G)(2) should be read as follows: "To consider the purchase of property for public purposes * * * *if* the premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest." (Emphasis added.) Appellees contend the property purchasing clause of subsection (G)(2) stands alone, without requiring the conditional clause to apply. We agree with appellees.

{¶ 21} When interpreting a statute, a trial court examines the ordinary meaning of the words or phrases at issue and, whenever possible, interprets the statute according to that meaning. *Lingle v. State*, 164 Ohio St.3d 340, 2020-Ohio-6788, 172 N.E.3d 977, ¶ 15. In situations where the statute proves to be vague or ambiguous, sometimes reading the entire statute applies the appropriate context for the questioned passage. *K Mart Corporation v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988). In other instances, a trial court must instead turn to the appropriate canons of statutory construction to appropriately construe the statute.

{¶ 22} We find when reading subsection (G)(2), the ordinary meaning is clear: a public body can enter executive session to discuss the purchase of property without additional qualification. An examination of how this would work in practice further supports this conclusion.

{¶ 23} When a public body is seeking to purchase property, it usually does so with the intent to get the best value for the public. A public discussion about the offer, negotiation strategy, and material terms would likely reveal those critical details to a potential seller. In turn, it is reasonable to assume most sellers would pursue maximum profit with that information.

{¶ 24} In contrast, when a public entity is selling property, that property is usually no longer fit for public use. Unlike a business, a public entity does not buy property in the hopes of future profit; thus, its intent when selling can be broadly defined as recovering what monetary value, if any, the property has left at the end of its public service. And a public body often disposes of property through competitive bidding, which can maximize the monetary return on the property's residual value. It follows then that executive session will normally not be needed when selling property using public bidding.

{¶ 25} Yet, there are some situations, such as where a piece of property no longer fit for public use has appreciated in value, that a public discussion about its sale could undermine the value the public could stand to receive by its sale. In such a case, the General Assembly has provided an exception, in the form of the conditional clause, for public bodies to discuss that matter in executive session.

{¶ 26} Appellants disagree that the statute is capable of being applied without resorting to statutory construction. Even if we were to agree with this, appellants would still not prevail. One of the methods provided by the General Assembly is to resolve the issue by looking to the legislative history. R.C. 1.49. Here, before the statute was amended in 2016, it read as follows: "To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose

personal, private interest is adverse to the general public interest." This version makes it even more clear that the legislature did not intend for the conditional clause to apply to purchases.

{¶ 27} Upon review, we find the trial court did not err in its interpretation of R.C. 121.22(G)(2) regarding the conditional clause.

{¶ 28} Assignment of Error III is denied.

IV, V

{¶ 29} In their fourth and fifth assignments of error, appellants claim the trial court erred in excluding relevant evidence and prohibiting cross-examination. We disagree.

{¶ 30} The recent Supreme Court case of *State ex rel. Hicks v. Clermont County Board of Commissioners*, 2022-Ohio-4237, --- N.E.3d ---, controls much of the issues here.¹ In *Hicks*, the board of commissioners entered into executive session on multiple occasions after giving a "laundry list" of reasons for doing so "rather than identifying the specific issues it intended to discuss in executive session." *Id.* at ¶ 2. The case proceeded through discovery, but neither side could establish what happened in those executive sessions, including the commissioners, who testified they could not remember the details. *Id.* at ¶ 3. Under the framework established by the Twelfth District, this resulted in the commissioners losing at summary judgment because the burden had flipped to the commissioners to demonstrate a valid reason for entering into executive session. *Id.* at ¶ 4.

¹The trial court and the parties did not have the benefit of the *Hicks* decision during trial, but were well aware of the pending appeal in the Supreme Court. In fact, the trial court discussed the case in its October 20, 2022 judgment at 13-14.

{¶ 31} The Supreme Court rejected the burden-shifting framework created by the Twelfth District. The court re-affirmed that the plaintiff maintained the burden of proof. *Id.* at ¶ 11 ("the statutory provision authorizing citizens to sue public bodies for violations of the OMA clearly places the burden of proof, or at least the burden of persuasion, on the plaintiff"). Moreover, the *Hicks* court held that evidence of the commissioners entering into executive session after properly passing a motion is treated as facial compliance with the open meetings act, thus not permitting the burden to shift to the public body. *Id.* at ¶ 14.

{¶ 32} Relevant to this matter, the Supreme Court touched on the evidentiary burden a plaintiff faces in the absence of the burden-shifting framework. *Id.* ¶ 18. The court stated that through discovery, the plaintiff will have access to the same evidence as the public body. *Id.* The court also keenly noted that if a public body complied with the requirements of R.C. 121.22, there may not be any evidence of what occurred in the executive session beyond the recorded meeting minutes. *Id.*

{¶ 33} The Supreme Court then went on apply the "presumption of regularity" to public officers and the OMA. *Id.* at ¶ 21. This means unless there is evidence to the contrary, courts should presume the public body acted lawfully. *Id.* In light of this presumption, the court held, "the burden of production remains on the plaintiff to overcome the presumption and prove that a violation occurred." *Id.* The court went on to reject the proposition that a public body is required to discuss every matter included in its motion to enter executive session. *Id.* at ¶ 34-35, 37.

{¶ 34} Although *Hicks* did not directly deal with how a trial court should manage discovery and the admission of evidence in an OMA case, its holding provides ample guidance in this regard.

{¶ 35} Here, aside from the legal argument regarding the interpretation of subsection (G)(2), there is no dispute the meeting was properly noticed and the minutes showed facial compliance with the OMA.² In such a case, the presumption of regularity attaches and the plaintiff maintains the burden of persuasion and the burden of production. As noted in *Hicks*, due to the secrecy of executive session and the probable lack of publicly available records, if there is evidence of a violation, it is probably known only to the defendants. *Id.* ¶ 18.

{¶ 36} Because of this asymmetry of knowledge, appellants argue in essence that OMA plaintiffs ought to be entitled to robust discovery followed by broad cross-examination of witnesses with the generous admission of evidence. We disagree.

{¶ 37} Importantly, the OMA does not change the fact that most of the trial court's evidentiary decisions are reviewed only for an abuse of discretion. "It is well settled that a trial court has broad discretion in the admission or exclusion of evidence, and so long as such discretion is exercised in line with the rules of procedure and evidence, its judgment will not be reversed absent a clear showing of an abuse of discretion with attendant material prejudice." *Stark County Park District v. Dickerhoof*, 2018-Ohio-4319, 122 N.E.3d 608, ¶ 50 (5th Dist). In addition, there is a very real possibility, as acknowledged in *Hicks*, that there is no evidence to produce to a plaintiff.

{¶ 38} Here, before the trial court, was an OMA claim with stipulated compliance to which the presumption of regularity attached and plaintiffs without evidence in its

²In fact, the parties stipulated "with respect to each of the four executive sessions at issue, Defendants complied with the procedural formalities of Section (G), through a proper motion and roll call vote, and that Defendants stated a proper statutory basis for entering executive session by referencing purchase of property for public purposes under (G)(2)." October 20, 2022 Judgment at 4; T. at 21-22.

possession sufficient to overcome that presumption. Moreover, even after discovery, there was the possibility that there still would not be sufficient evidence for plaintiffs to meet their burden. The trial court attempted to balance these various competing interests of the parties by limiting the admission of evidence and cross-examination. We do not find the trial court abused its discretion.

{¶ 39} Appellants claim discussions and/or decisions were held and/or made during the executive sessions that were outside the scope of the stated purpose for the sessions. They argue the trial court limited their ability to cross-examine the witnesses regarding discussions held during the executive sessions which was a particularly egregious error.

{¶ 40} Appellees' director, Jeffrey A. Matthews, and appellees' chairman, Samuel J. Ferruccio, Jr., were called to testify on cross-examination by appellants. On redirect, appellees asked Mr. Matthews: "With respect to any of the executive sessions that Mr. Hartman asked you about, was there anything discussed in any of those sessions aside from the purchase of public property?" *Id.* at 131. Mr. Matthews responded in the negative. *Id.* At no time was Mr. Ferruccio questioned as to whether anything other than the purchase of property for public purposes was discussed during the executive sessions. Yet appellants sought to question Mr. Ferruccio on public statements he made after an executive session. Given the presumption of regularity, there was no foundation to challenge Mr. Ferruccio on his public comments.

{¶ 41} Appellants did not ask either witness the general question about whether anything other than the purchase of property for public purposes was discussed during the executive sessions because they were well aware of the trial court's position:

THE COURT: But that's what's at issue here is whether or not the members violated the spirit of the statute with respect to the executive session and whether or not they discussed anything beyond the scope of property for a public purpose, and it's a real simple question: Did you discuss anything beyond the scope of purchase of property for a public purpose, and we can move on. Because if they didn't, then we're done.

T. at 67; see also T. at 96-97.

{¶ 42} Instead, appellants' inquiries were described by the trial court as an attempt to "get in through the back door by asking specific questions and I'm not going to allow that to occur." T. at 49.

{¶ 43} Appellants assert cross-examination is "the greatest legal engine ever invented for the discovery of truth." Appellants' Brief at 21, citing *California v. Green*, 399 U.S. 149, 158, 90 S.Ct. 1930 (1970). That may be so, but given the presumption of regularity here and the absence of other evidence showing a violation, we cannot say the trial court abused its discretion in limiting cross-examination. Further, the trial court's decision was consistent with *Hicks*. Appellants had the opportunity to test the facial validity of the meeting minutes with limited cross-examination. But the witnesses' answers strengthened—rather than weakened—appellees' claim of compliance. It remained very speculative that further cross-examination would have led to a different outcome.

{¶ 44} Appellants also argue the trial court erred in limiting their cross-examination because the trial court was misguided that discussions in executive session are

confidential. Appellees maintain having complete access to all executive session material could have a chilling effect on future discussions. We agree generally that public bodies have some interest in protecting some of the details of the discussions that occur during lawful executive sessions. But this case does not require us to go any further than that. Here, appellees sought and received a protective order under Civ.R. 26(C) pertaining to the scope of depositions. In the June 14, 2022 protective order at 18, the trial court ordered the following:

To this end, Plaintiffs may inquire generally as to the *nature of topics discussed at the executive sessions in question*, specifically to determine whether the topics discussed related to "the purchase of property for a public purpose." Plaintiffs may not inquire into the substance or specific details of any information presented or any conversations that took place during those executive sessions. Inquiry beyond the Court's prescribed parameters is neither relevant nor necessary for Plaintiffs to prove their case, and no compelling justification exists to override the confidentiality generally protecting such discussions.

{¶ 45} The trial court found this approach afforded appellants "the opportunity to explore what is potentially relevant to their claims without permitting an unlimited fishing expedition into confidential matters wholly irrelevant to the case." *Id.* Appellants chose not to conduct depositions.

{¶ 46} Prior to trial, appellees filed a motion in limine to confine "the scope of evidence at trial to the parameters imposed in the previously issued protective order."

Defendants' Motion in Limine filed July 11, 2022. The trial court issued a pretrial order standing "by its previous rulings concerning the permissible scope of inquiry in this matter." August 4, 2022 Pretrial Order at 13. The trial court stated appellants were not "permitted to undertake a 'full and unlimited inquiry' into all matters discussed during the executive sessions. Such evidence is irrelevant to any claim pending in this case as it would not tend to prove or disprove any fact that is of consequence to the determination of the action." *Id.* at 15. The trial court was consistent with this ruling throughout the trial. T. at 47, 49, 56-57.

{¶ 47} A review of the transcript indicates a witness never testified to discussing a topic that was not covered under subsection (G)(2). In fact, appellants never asked that general question. Instead, they attempted to inquire about specific discussions during the executive sessions which the trial court was very clear about in its orders. The trial court's rulings were based on relevance, not confidentiality.

{¶ 48} In reviewing appellants' objected to inquiries throughout the trial, we find the trial court did not abuse its discretion in finding them to be irrelevant as to whether improper topics were discussed during the executive sessions. We find the trial court's orders fairly balanced the concerns of the Supreme Court set forth in *Hicks*. The Supreme Court expressed a need to balance the presumption of regularity and the distinct possibility there would be a lack of evidence in existence to rebut that presumption against a plaintiff's lawful opportunity to satisfy both its burden of proof and burden of production.

{¶ 49} Assignments of Error IV and V are denied.

VI

{¶ 50} In their sixth assignment of error, appellants claim cumulative error. We disagree.

{¶ 51} In *State v. Brown*, 100 Ohio St.3d 51, 2003-Ohio-5059, 796 N.E.2d 506, the Supreme Court of Ohio recognized the doctrine of cumulative error. However, where we have found the trial court did not err, cumulative error is inapplicable. *State v. Carter*, 5th Dist. Stark No. 2002CA00125, 2003-Ohio-1313, ¶ 37.

{¶ 52} We have found no error in appellants' preceding assignments of error; therefore, the doctrine of cumulative error is inapplicable.

{¶ 53} Assignment of Error VI is denied.

I

{¶ 54} In their first assignment of error, appellants claim the trial court erred in granting judgment to appellees and dismissing the complaint. We disagree.

{¶ 55} The trial court dismissed the complaint pursuant to Civ.R. 41 (B)(2) which states in pertinent part:

After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

{¶ 56} In ruling pursuant to Civ.R. 41(B)(2), a trial court "is not required to construe the evidence in favor of the non-moving party, but rather may weigh the evidence and render judgment." *Canter v. Wolfe*, 5th Dist. Fairfield No. 15 CA 64, 2016-Ohio-5300, ¶

18, citing *Levine v. Beckman*, 48 Ohio App.3d 24, 27, 548 N.E.2d 267 (10th Dist.1988). A trial court may order a dismissal "if it finds that the plaintiff's evidence is not persuasive or credible enough to satisfy [the] burden of proof." *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, 878 N.E.2d 66, ¶ 9 (10th Dist.). A trial court's ruling on a Civ.R. 41(B)(2) motion can be reversed on appeal if it is erroneous as a matter of law or against the manifest weight of the evidence. *Canter* at ¶ 19.

{¶ 57} In its October 20, 2022 judgment dismissing the complaint, the trial court determined the following at 9-10:

Based upon the testimony of the witnesses who appeared at trial (Jeff Matthews, BOE director; and Sam Ferruccio, BOE chairman, along with the numerous exhibits introduced (including the minutes from the various meetings, the transcripts, the audio recordings, communications from and between members of the BOE, and numerous other items), and based on the Court's assessment of the witnesses' demeanor and credibility, the Court finds that Plaintiffs failed to prove the (G)(2) exception was either invalid or inapplicable. The overwhelming evidence demonstrated to the Court's satisfaction that with respect to all four of the executive sessions at issue, the topic that was intended to be discussed, and the topic that was in fact discussed, was the purchase of property for public use, specifically, the purchase of voting equipment for the County. When specifically asked if anything other than that topic was discussed at any of the relevant executive sessions, the witnesses testified that nothing other than that was discussed. The Court finds this testimony not only

credible, but also consistent with the minutes and recordings that were introduced into evidence.

{¶ 58} We do not find the trial court's decision to be erroneous as a matter of law or against the manifest weight of the evidence. Appellants' arguments in support of this assignment of error have been reviewed above and have been denied.

{¶ 59} As stated by the Supreme Court in *Hicks*, 2022-Ohio-4237, --- N.E.3d ---, ¶ 22: "Under the presumption of regularity, absent evidence to the contrary, courts should presume that a public body in executive session discussed the topics stated in its motion to enter executive session and did not discuss any matters not stated in the motion. * * * It is the plaintiff's burden to prove otherwise." Appellants did not present any evidence showing that appellees discussed any improper topics during any of the executive sessions; they did not meet their burden.

{¶ 60} Upon review, we find the trial court did not err in dismissing the complaint.

{¶ 61} Assignment of Error I is denied.

{¶ 62} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By King, J.

Delaney, P.J. and

Baldwin, J. concur.