[Cite as *Knowles v. Ohio St. Univ.*, 2002-Ohio-3228.]

IN THE COURT OF CLAIMS OF OHIO

DR. TIMOTHY S. KNOWLES	:	
Plaintiff	:	CASE NO. 2001-03780
v.	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
OHIO STATE UNIVERSITY	:	Judge Everett Burton
Defendant	:	

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{¶1} Plaintiff brought this action alleging breach of contract, defamation and denial of due process. The issues in the case were bifurcated and a trial was held on the sole issue of liability. Upon conclusion of plaintiff's case-in-chief, the court granted defendant's motion to dismiss pursuant to Civ.R. 41(B)(2). That judgment entry was journalized on March 13, 2002.

{¶2} On March 18, 2002, plaintiff filed a motion requesting written findings of fact and conclusions of law. On April 8, 2002, the court granted the motion and ordered the parties to submit proposed findings and conclusions. Based upon the parties' submissions and the evidence adduced at trial, the court makes the following findings of fact:

{¶3} 1) Plaintiff was employed by defendant, The Ohio State University (OSU) from August 1, 1999, to July 31, 2000, in the position of Vice Provost of the Office of Minority Affairs (OMA);

{¶4} 2) The office of Vice Provost is an executive-level position. Plaintiff therefore reported directly to the Provost of the University. The Provost reports directly to the University President;

{¶5} 3) Plaintiff did not have tenure. He was not a member of the classified civil service, nor was he a member of a collective bargaining unit;

{¶6} 4) The parties' sole agreement regarding OSU's ability to terminate plaintiff and the procedures necessary to do so, are contained in the employment contract;

{¶7} 5) The terms of the employment contract are contained in a letter to plaintiff dated June 9, 1999. The document was signed by Provost Edward J. Ray and states in pertinent part:

{¶8} "This appointment will begin August 1, 1999, and is for a period of five years subject to the results of an annual performance review and continued acceptable performance.

{¶9} "Should I determine that terminating your appointment before the end of the five-year period is appropriate, severance pay of one year's cash salary will be provided. I expect you to provide at least 90 days notice of your intent to leave your position;"

{¶10} 6) Plaintiff signed the employment contract to acknowledge his acceptance of its terms;

{¶11} 7) The contract does not guarantee employment for a five-year term. Rather, the express terms of the document demonstrate that plaintiff served at the sole

satisfaction of the Provost: as long as Provost Ray found plaintiff's performance acceptable, plaintiff could continue to work for OSU;

{¶12} 8) There is no language in the contract that can reasonably be construed to provide that plaintiff could be terminated only for just cause;

{¶13} 9) The only limitation upon the Provost's ability to terminate plaintiff was that if he were to be terminated before five years had elapsed, OSU would pay plaintiff one year of severance pay;

{¶14} 10) Plaintiff's performance was reviewed near the end of his first year of employment. The evidence establishes that there were several concerns. For example, there was significant internal strife within OMA. There were also complaints from various members of OMA's external stakeholders;

{¶15} 11) The evidence establishes that several executive employees of the OMA lodged complaints about plaintiff's performance;

{¶16} 12) The evidence establishes that plaintiff's own Assistant Vice Provost, Dr. Maurice Shipley, filed complaints concerning plaintiff's demeaning style in dealing with his subordinates;

{¶17} 13) The evidence establishes that three other executive-level OMA employees (Dr. Tamra Minor, Rose Wilson-Hill, and Paula Smith) filed both formal and informal complaints against plaintiff;

{¶18} 14) The evidence establishes that other employees within OMA also complained about plaintiff;

{¶19} 15) The evidence establishes that the above-cited complaints were not isolated events. They continued throughout plaintiff's first year with OSU;

{¶20} 16) The evidence establishes that Provost Ray took several measures to assist plaintiff in overcoming his management problems. He communicated regularly with plaintiff concerning various steps that plaintiff could take to ensure success as a Vice Provost;

{¶21} 17) The evidence establishes that plaintiff was advised of the complaints against him throughout the year;

{¶22} 18) The evidence establishes that attempts to rehabilitate plaintiff's management style were unsuccessful;

{¶23} 19) On or about July 13, 2000, OSU asked plaintiff to resign in lieu of termination. When he refused to resign, he was terminated as of July 31, 2000;

{¶24} 20) Following his termination, plaintiff received severance pay equal to one year's salary;

{¶25} 21) With regard to plaintiff's defamation claim, there is no credible evidence in the record establishing that Provost Ray communicated to a student that plaintiff had been fired from a previous position;

{¶26} 22) There is no credible evidence in the record establishing that the typewritten articles proffered by plaintiff were publications by OSU or that information included in them was actually disseminated by OSU;

{¶27} 23) There is no credible evidence in the record establishing that any statement or publication from OSU caused harm to plaintiff;

{¶28} 24) There is no credible evidence in the record establishing that Provost Ray or any other administrator at OSU holds ill will, spite, or dislike for plaintiff;

{¶29} 25) As to plaintiff's third claim, there is no credible evidence in the record establishing that plaintiff was denied any procedural rights with regard to his termination."

* * * *

{¶30} Based upon the facts found above, the court makes the following conclusions of law:

{¶31} 1) Breach of contract. Under Ohio law, employment is presumed to be at-will unless other contractual provisions expressly or impliedly provide otherwise. *Henkel v. Educ. Research Council* (1976), 45 Ohio St.2d 249. However, the "facts and circumstances" may be considered to determine whether they demonstrate "what took place, the parties' intent, and the existence of implied or express contractual provisions which may alter the terms for discharge." *Id.*

{¶32} In this case, the June 9, 1999, letter from Provost Ray contains the terms and conditions of plaintiff's employment. When plaintiff signed the letter, it became a contract.

Its terms are clear and unambiguous. As such, the parol evidence rule generally precludes any attempt by plaintiff to introduce evidence of an oral agreement that would vary the terms of the express, written agreement. See, *e.g.*, *Ed Schory & Sons, Inc. v. Soc. Natl. Bank* (1996), 75 Ohio St.3d 433, 440. *Kashif v. Central State Univ*. (June 3, 1999), Franklin App. No. 98AP-885. However, in this case, plaintiff has admitted that no one at OSU made any oral guarantees of employment and that no one told him that he could be fired only for just cause. Moreover, the court has found no facts or circumstances surrounding the employment agreement that would alter the conclusion that the June 9, 1999, letter clearly expresses the parties' intent and the terms for continued employment. In sum, Provost Ray had the authority to terminate plaintiff at any time and for any reason which he chose. The evidence is clear that he had valid reasons for his decision.

{¶33} Finally, it is well-settled law that trial courts should defer to the academic decisions of colleges and universities unless there has been such a substantial departure from the accepted academic norms so as to demonstrate that the committee or person responsible did not actually exercise professional judgment. *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App.3d 302, 308. No evidence has been submitted in this case to demonstrate a "substantial departure from academic norms" or to show that Provost Ray failed to exercise professional judgment. Accordingly, the court defers to the Provost's determination and concludes that plaintiff has failed to prove his breach of contract claim;

{¶34} 2) Defamation. Defamation is defined as "the unprivileged publication of a false and defamatory matter about another *** which tends to cause injury to a person's reputation or exposes him to public hatred, contempt, ridicule, shame or disgrace or affects him adversely in his trade or business." *McCartney v. Oblates of St. Francis deSales* (1992), 80 Ohio App.3d 345, 353. In Ohio, truth is a complete defense to a claim for defamation. *Sethi v. WFMJ Television* (1999), 134 Ohio App.3d 796. In order to prevail on such a claim, plaintiff must show a false and defamatory statement made by defendant, a publication of that statement, and fault on the part of defendant amounting to, at least, negligence. *Black v. Cleveland Police Dept.* (1994), 96 Ohio App.3d 84.

{¶35} In this case, the court has found no facts that would establish any of the three elements set forth in *Black*, *supra*. Further, the court has found no facts that would demonstrate that plaintiff suffered any actual injury or adverse effect as a result of the alleged defamatory statement or publication. Therefore, plaintiff has failed to prove his defamation claim;

{¶36} 3) Denial of due process. With respect to plaintiff's claim of denial of due process, it is another well-settled rule of law that this court is without jurisdiction to determine such issues. *Graham v. Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620. However, even assuming that jurisdiction did exist, plaintiff did not establish a due process violation. In order to succeed on such a claim, a plaintiff must prove deprivation of a property interest without procedural safeguards. When the property right concerns

employment, a plaintiff must establish a legitimate entitlement to continued employment. See *State ex rel. Trimble v. State Bd. of Cosmetology* (1977), 50 Ohio St.2d 283, 285. In this case, there has been no such proof. Plaintiff did not have tenure. He was not a member of the classified civil service. His employment was not subject to a collective bargaining agreement. There were no provisions in the employment contract that provided for a termination hearing, or that required written grounds for termination. There was no evidence that plaintiff was otherwise entitled to such procedural rights. To the contrary, the court has found that he served solely at the satisfaction of the Provost. Accordingly, plaintiff's due process claim must fail.

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EVERETT BURTON
Judge

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Filed 5-3-2002
Jr. Vol. 703, Pgs. 182-189
To S.C. reporter 6-26-2002