

# Court of Claims of Ohio

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SHEILA J. BELL

Plaintiff

v.

OHIO STATE BOARD OF TRUSTEES

Defendant

Case No. 2005-09260  
Judge Joseph T. Clark

## DECISION

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{¶1} On July 31, 2006, defendant, Ohio State Board of Trustees (OSBT), filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff filed a response on August 15, 2006. On September 6, 2006, an oral hearing was held on defendant's motion.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. \*\*\*” See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff asserts that she entered into a contract with defendant when she applied for entrance into The Ohio State University College of Medicine (OSU COM), and that she was accepted for enrollment in the medical degree program in 1987. According to plaintiff, OSBT violated the terms of said contract when it refused to confer upon her a

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medical degree. Plaintiff contends that she was “unduly penalized” when she was required to repeat a month-long Internal Medicine Clerkship rotation after she missed both a clinical and a final examination due to illness in August 1993. According to plaintiff, she was notified that she had received an unsatisfactory grade as a result of “unexcused absences” from the clerkship as well as failure to take an Objective Structured Clinical Examination (OSCE) and the final examination. Plaintiff states that defendant’s publication of the term “unexcused absences” was inaccurate and defamatory inasmuch as she “had completed the clinical assignments and received favorable evaluations by all attending physicians \*\*\*.”

{15} Plaintiff protested the imposed remedial action and pursued numerous internal departmental appeals, albeit unsuccessfully. Plaintiff eventually completed another rotation, but the work was not approved because the clinical experience was not performed at OSU Hospital. Plaintiff continued to file additional internal appeals without success. She was again informed in early September that the remedial clerkship had to be completed before she would be allowed to graduate. It is undisputed that plaintiff left the country and traveled to Africa from September 1994 through June 1995. Upon her return, she applied for reinstatement and was readmitted to OSU COM in May 1996; however, her readmission was conditional such that certain requirements<sup>1</sup> were to be completed by July 31, 1997, or plaintiff would be subject to dismissal without the opportunity for reinstatement. Plaintiff did not accomplish the select tasks and she was notified in December 1997 that she had been dismissed from OSU COM.

{16} Plaintiff initiated legal action on July 6, 1998, in the United States District Court for the Eastern District of Michigan; however, the complaint was dismissed for lack of subject matter jurisdiction. On December 17, 1998, plaintiff filed a complaint in the United States District Court for the Southern District of Ohio against OSBT, as well as OSU COM

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Plaintiff was directed, inter alia, to complete a month-long clinical Internal Medicine rotation at The Ohio State University Medical Center and to pass the OSCE and the final examination.

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and several other university defendants, alleging violations of substantive and procedural due process and of equal protection pursuant to Sections 1981 and 1983, Title 42 U.S.Code. The defendants in the federal action filed motions for summary judgment based on the expiration of the applicable statutes of limitations as to any claims that were premised upon events which occurred prior to July 6, 1996. Plaintiff responded by arguing that defendants had engaged in ongoing discriminatory actions that culminated in plaintiff's ultimate dismissal from OSU COM in December 1997.

{¶7} In deciding whether the complaint was timely filed under the "continuing violations theory," the federal court made the following determination:

{¶8} "The Court concludes that the continuing violations theory is inapplicable to this case. At the most, Plaintiff's allegations encompass the continued ill effects of the alleged constitutional violations. Plaintiff's constitutional claims are premised upon the circumstances surrounding her completion of the Internal Medicine rotation. Plaintiff alleges that the lack of a policy or procedure in the medical student handbook to address the situation in which she found herself after not taking the final exam and OSCE resulted in a deprivation of due process. Plaintiff also alleges that the events which followed demonstrate a discriminatory animus.

{¶9} "In the Court's view, the events which followed Plaintiff's unsuccessful completion of the Internal Medicine rotation do not support the theory that Defendants engaged in continued unlawful acts. Rather, the events which followed can only be viewed as the 'ill effects' of the Plaintiff's unsuccessful completion of the Internal Medicine rotation. Moreover, the record clearly demonstrates that Plaintiff's ultimate dismissal from the OSU COM was attributable to academic deficiencies separate from her non-completion of the Internal Medicine core rotation.

{¶10} "The Court also concludes that the facts at bar do not support application of the second category of the continuing violations doctrine, *i.e.*, an overarching policy of

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discrimination by the Defendants. There is simply no evidence in the record to demonstrate that there was an overarching policy of discrimination directed at Plaintiff.

{¶11} “The Court therefore concludes that, to the extent Plaintiff seeks relief under 42 U.S.C. § § 1981 and 1983 for events which occurred prior to July 6, 1996, the Defendants are entitled to summary judgment.” *Bell v. Ohio State Univ.* (Feb. 5, 2002), S.D. Ohio No. 2:98-CV-1274, aff’d by *Bell v. Ohio State Univ.*, 351 F.3d 240, (6th Cir. Ohio, 2003).

{¶12} Plaintiff thereupon filed a complaint in this court on October 16, 2001, which was voluntarily dismissed without prejudice by stipulation of the parties on November 19, 2004. On August 22, 2005, plaintiff refiled her complaint alleging claims of defamation, intentional infliction of emotional distress and breach of contract. The defamation claim concerns the reference to “unexcused absences” contained in plaintiff’s academic records. Plaintiff further alleges that she suffered emotional distress when defendant refused to allow her to participate in the June 1994 convocation ceremonies.

{¶13} Defendant insists that plaintiff’s claims are barred by the two-year statute of limitations. R.C. 2743.16.<sup>2</sup> To the extent that plaintiff’s complaint alleges a cause of action for defamation, defendant maintains that R.C. 2305.11(A) provides a one-year statute of limitations. Plaintiff contends, however, that her cause of action accrued on December 24, 1997, the date that she was dismissed from OSU COM. In addition, plaintiff argues that since the federal court declined to exercise pendant jurisdiction over the state claims which were dismissed on October 16, 2000, plaintiff’s complaint was timely filed in the Court of Claims on October 16, 2001.

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R.C. 2743.16(A), the statute of limitations for commencing actions in this court, states as follows: “Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.”

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{¶14} Defendant asserts that plaintiff sued OSBT in federal court and that the federal court found that the claims related to the events which occurred prior to July 6, 1996, were untimely filed. In addition, the federal court determined that OSBT and OSU COM did not engage in an ongoing pattern of “continued unlawful acts”; rather, that plaintiff’s claims were associated with the residual effect of plaintiff’s failure to complete the Internal Medicine rotation in August 1993. Thus, defendant argues that pursuant to the doctrine of issue preclusion, plaintiff is prevented from relitigating those claims. The court agrees.

{¶15} The Tenth District Court of Appeals has held that “R.C. 2743.16(A) applies to all actions against the state in the Ohio Court of Claims.” *Talmon v. Ohio State Lottery Commission* (Oct. 6, 1992), Franklin App. No. 92AP-693, citing *Fellman v. Ohio Dept. of Commerce* (Sept. 29, 1992), No. 92AP-457. The Supreme Court of Ohio explained that “[t]he rationale underlying statutes of limitations is fourfold: to ensure fairness to defendant; to encourage prompt prosecution of causes of action; to suppress stale and fraudulent claims; and to avoid the inconvenience engendered by delay, specifically the difficulties of proof present in older cases.” *O’Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84, 88, citing *Harig v. Johns-Manville Products Corp.* (1978), 284 Md. 70, 75. In addition, this court has previously held that the statute of limitations is not tolled during the pendency of administrative proceedings. *Taylor v. Dept. of Rehab. and Correction* (Oct. 11, 2000), Ct. Cl. No. 2000-08711, citing *Wiley v. Adjutant General’s Department* (Sept. 1, 1994), Franklin App. No. 94API02-176.

{¶16} According to the complaint, plaintiff’s intentional infliction of emotional distress claim arose in June 1994 when plaintiff was not allowed to participate in the convocation ceremony. In addition, plaintiff’s defamation claim accrued in September 1993 when she learned that she had received an unsatisfactory grade allegedly due to unexcused absences during the clerkship. Plaintiff delayed filing her complaint in this court until October 16, 2001, well after the alleged defamatory remarks were communicated and

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nearly four years after she was formally dismissed. Upon review of all the evidence submitted, and the oral argument presented at the September hearing, the court finds that plaintiff's claims listed in Counts One and Two were not timely filed and are hereby DISMISSED.

{¶17} Plaintiff's breach of contract claims concern defendant's refusal to grant plaintiff a medical degree. Plaintiff alleges that she performed and completed the contractual requirements and that defendant failed to comply with its contractual responsibilities. Plaintiff contends that her dismissal on December 24, 1997, without the opportunity for reinstatement, was a breach of her contract with defendant. Defendant argues that the federal court reviewed the same set of facts as presented to this court and determined that plaintiff's dismissal was the "culmination of a series of deficiencies, not a failure to take only a single examination." Thus, defendant argues that the facts found by the district court prevent plaintiff from prevailing on her breach of contract claim, as a matter of law.

{¶18} Under Ohio law, the doctrine of issue preclusion, also known as collateral estoppel, holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different. *Norwood v. McDonald* (1943), 142 Ohio St. 299, paragraph three of the syllabus; *Trautwein v. Sorgenfrei* (1979), 58 Ohio St.2d 493, syllabus; *Goodson v. McDonough Power Equip., Inc.* (1983), 2 Ohio St.3d 193, paragraph one of the syllabus.

{¶19} The Supreme Court of Ohio explained that "under the rule of collateral estoppel, even where the cause of action is different in a subsequent suit, a judgment in a prior suit may nevertheless affect the outcome of the second suit." *Fort Frye Teachers Ass'n v. State Empl. Rels. Bd.*, 81 Ohio St.3d 392, 395, 1998-Ohio-435.

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{¶20} Thus, the doctrine of collateral estoppel applies when, as in the instant case, the actions involve the same parties and the facts at issue in the prior case were resolved by a court of competent jurisdiction. See *Blackburn v. Springer* (1994), Scioto App. No. 93CA 2161, p. 10 (noting that the concept of mutuality of the parties may be relaxed when the party against whom the judgment is asserted had the opportunity to fully litigate the specific issue about which one party seeks to bar relitigation). Plaintiff has had the opportunity to fully litigate her dispute. Indeed, the federal court reviewed all the pertinent facts presented herein and made the following determination:

{¶21} “In the case at bar, the evidence clearly indicates that, \*\*\*, she was afforded all the process that was due to her. In particular, Plaintiff was notified on several occasions of the faculty’s dissatisfaction of her performance. Although Plaintiff was afforded opportunities to redeem her academic performance, she failed to do so.

{¶22} “\*\*\*

{¶23} “The record clearly demonstrates that the decision to dismiss Plaintiff was given careful and deliberate consideration.” *Bell*, supra, at 36.

{¶24} For the foregoing reasons, and construing the evidence most strongly in plaintiff’s favor, defendant’s motion for summary judgment shall be granted and accordingly, judgment shall be rendered in favor of defendant.

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## JUDGMENT ENTRY

An oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK  
Judge

cc:

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