

# Court of Claims of Ohio

The Ohio Judicial Center  
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SHANA MCDADE

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2013-00025

Judge Patrick M. McGrath

## ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On January 6, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff filed a memorandum in opposition on January 28, 2014. On February 3, 2014, defendant filed a reply.<sup>1</sup> The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶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

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<sup>1</sup>Defendant's February 3, 2014 motion for leave to file a reply is GRANTED instanter.

have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} In January 2011, plaintiff was a student in the Accelerated Bachelor of Science Nursing Program (nursing program) at Cleveland State University (CSU). In order to graduate from the nursing program, students are required to complete a series of clinical courses in which students engage in clinical rotations at various hospitals, nursing homes, and community health agencies. Under the supervision of CSU instructors, students interact with and care for patients. In December 2011, following an investigation in which CSU contacted plaintiff's instructor, Professor Shellie Hawk, Patient A, a patient formerly under plaintiff's care, plaintiff, and a nurse at Hillcrest Hospital, plaintiff was issued a failing grade for her clinical rotation at Hillcrest Hospital and dismissed from the nursing program. CSU determined that plaintiff endangered the welfare of her patients, falsified patients' medical records, and lied to her instructor, Professor Hawk, and the assigned staff nurse.

{¶5} In support of its position, defendant submitted the affidavit of Vida Lock, Dean of the School of Nursing at CSU, along with various attachments thereto. Defendant also submitted the depositions of plaintiff and Patient A.<sup>2</sup> Lock avers that six months after plaintiff matriculated into the nursing program, she became aware of concerns regarding plaintiff's performance during her clinical rotations. Lock states that she met with plaintiff who denied the allegations; however, Lock did not find plaintiff's story to be credible and questioned the truthfulness of plaintiff's statements. Nevertheless, Lock allowed plaintiff to continue in her clinical courses, hoping that

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<sup>2</sup>Patient A's deposition was filed under seal.

plaintiff would learn from the experience. The incident was documented in plaintiff's official student file.

{¶6} Several months later in December 2011, Lock became aware of new allegations regarding plaintiff's conduct at a different hospital. Plaintiff was accused of failing to perform necessary post-partum assessments on Patient A. Additionally, plaintiff was accused of falsifying a patient's records by documenting assessments that she had not performed. Finally, plaintiff was accused of lying to her instructor, Professor Hawk, and her assigned staff nurse. Professor Hawk, Patient A, and the Course Coordinator, Pam Rutar, provided written statements to CSU regarding the matter.

{¶7} In her deposition, Patient A testified that she had given birth by caesarean section on November 29, 2011. Patient A, a nursing instructor for a different nursing program, consented to allowing plaintiff provide care to her in the afternoon of November 30, 2011. Patient A testified that plaintiff came into her room to provide treatment only two times: once to perform an initial assessment and a second time with a charge nurse who administered a shot. Patient A denied that plaintiff had been in her room every half hour, which is a requirement Patient A maintains for her nursing students. Additionally, Patient A criticized plaintiff's assessment of her pressure dressing, a thick, large pad, tightly affixed to the body by tape. Patient A stated that plaintiff did not conduct a proper nursing assessment in that plaintiff only obtained her vitals, looked at her legs and asked about her incision. Patient A testified that plaintiff's assessment, which lasted only 5-10 minutes rather than the usual time of 20 minutes, failed to include listening to the lungs and stomach, failed to assess the fundus of the uterus, and failed to assess the newborn baby. Finally, Patient A stated that plaintiff should have been in her room more frequently and that plaintiff compromised her care.

{¶8} According to Lock, CSU issued plaintiff a failing grade in her clinical course and dismissed plaintiff from the nursing program based upon plaintiff's "inappropriate and unacceptable behavior." Lock Affidavit, ¶ 12. CSU determined that plaintiff failed to perform the appropriate assessment, failed to provide the necessary care for her assigned patient, misrepresented findings to both her instructor and the assigned staff nurse, and falsified medical records by charting an assessment that she did not perform. Lock avers that such behavior is "inconsistent with the responsibilities of citizenship and the profession of nursing." *Id.* at ¶ 10. According to the CSU School of Nursing Undergraduate Student Handbook (student handbook), "The School of Nursing reserves the right to immediately dismiss a student from the nursing major for incidents in which a nursing faculty member's written documentation indicates that the student's behavior was inconsistent with the responsibilities of citizenship or the profession of nursing." Exhibit G.<sup>3</sup>

{¶9} Lock avers that such a decision was made in accordance with the student handbook. Lock states that plaintiff was provided with a copy of the letter of dismissal from the nursing program along with a memorandum from Course Coordinator Rutar, dated December 5, 2011, and a letter from Professor Hawk, dated December 3, 2011. Exhibit F. Such documentation is a part of plaintiff's official student file. Plaintiff challenged her dismissal from the nursing program before the Student Grievance Board. After receiving the board's recommendation,<sup>4</sup> CSU's President accepted the decision of the nursing program to dismiss plaintiff from the program.

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<sup>3</sup> Lock avers that a true and accurate copy of the complete handbook is available at <http://www.csuohio.edu/nursing/undergrad/docs/BSNstudentHandbookSeptember%202009.pdf>. Plaintiff did not object to such authentication.

<sup>4</sup>The board's recommendation is attached to plaintiff's complaint as Exhibit 3.

{¶10} In response to defendant's motion, plaintiff submitted her own affidavit wherein she avers that she did not endanger the welfare of patients, falsify patient medical records, or lie to her nursing instructor or assigned staff nurse. Plaintiff also states that she was not provided with notice or an opportunity to be heard prior to her dismissal from the program. Plaintiff brings this action for breach of contract, negligence and unjust enrichment.<sup>5</sup>

{¶11} It is well-settled that the relationship between a college and a student who enrolls, pays tuition, and attends class is contractual in nature, and that the terms of this contractual relationship may be found in the handbook, catalogue, and other guidelines supplied to students. *Tate v. Owens State Community College*, 10th Dist. Franklin No. 10AP-1021, 2011-Ohio-3452, ¶ 21; *Jefferson v. Univ. of Toledo*, 10th Dist. Franklin No. 12AP-236, 2012-Ohio-4793, ¶ 15. In addressing an alleged breach of such contract, a trial court must defer to academic decisions of a college unless it is perceived that there existed "such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." *Bleicher v. Univ. of Cincinnati College of Med.*, 78 Ohio App.3d 302, 308 (10th Dist.1992), quoting *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985). "The standard of review is not merely whether the court would have decided the matter differently but, rather, whether the faculty action was arbitrary and capricious." *Bleicher* at 308.

{¶12} There is no dispute that the parties' relationship was based upon contract. A copy of the relevant student handbook is available on CSU's website. Although in her affidavit and deposition plaintiff denies that any of defendant's stated reasons for dismissing her from the program are true, plaintiff has not provided the court with any evidence to create an issue of fact as to whether defendant violated any contractual

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<sup>5</sup>The court previously dismissed plaintiff's claims regarding alleged violations of her civil rights.

provision of the student handbook, that defendant's decision was arbitrary and capricious, or that defendant failed to exercise professional judgment. Indeed, there is no dispute that defendant based its decision to dismiss plaintiff from the nursing program upon written statements provided by Patient A, Professor Hawk, and Course Coordinator Rutar. Moreover, the student handbook allows defendant to immediately dismiss a student when the written documentation indicates the student's behavior is inconsistent with the profession of nursing.

{¶13} "Generally, a party's unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civ.R. 56, will not be sufficient to demonstrate material issues of fact. Otherwise, a party could avoid summary judgment under all circumstances solely by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party." *Bell v. Beightler*, 10th Dist. Franklin No. 02AP-569, 2003-Ohio-88, ¶ 33; *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 170 (1997). "A party may not establish a material issue of fact in opposition to summary judgment by submitting a self-serving affidavit presenting nothing more than bare contradictions of other competent evidence and conclusory statements of law." *Wolf v. Big Lots Stores, Inc.*, 10th Dist. Franklin No. 07AP-511, 2008-Ohio-1837, ¶ 12. "An affidavit submitted on summary judgment must contain more than denials and conclusory assertions to create a genuine issue of material fact \* \* \*." *Deutsche Bank National Trust Co. v. Najjar*, 8th Dist. Cuyahoga No. 98502, 2013-Ohio-1657, ¶ 42, quoting *Bell*.

{¶14} Under the circumstances, a reasonable trier of fact could not possibly find that defendant failed to exercise professional judgment in making the decision to dismiss plaintiff from the nursing program. Plaintiff has not provided the court with evidence that defendant violated any provision of the student handbook or that

defendant's actions were arbitrary and capricious. Therefore, defendant is entitled to judgment on plaintiff's breach of contract claim, as a matter of law.

{¶15} With respect to plaintiff's claim for unjust enrichment, an equitable action for unjust enrichment will not lie when the subject of the claim is governed by an express contract. See *Kucan v. Gen. Am. Life Ins. Co.*, 10th Dist. Franklin No. 01AP-1099, 2002-Ohio-4290, ¶ 35, citing *Rumpke v. Acme Sheet & Roofing, Inc.*, 2nd Dist. Montgomery No. 17654, 1999 Ohio App. LEXIS 5392 (Nov. 12, 1999).

{¶16} Lastly, regarding plaintiff's claim of negligence, "in order to establish actionable negligence, one seeking recovery must show the existence of a duty, the breach of the duty, and injury resulting proximately therefrom." *Strother v. Hutchinson*, 67 Ohio St.2d 282, 285 (1981). Plaintiff's alleged damages are economic in nature, however, and "[t]he economic-loss rule generally prevents recovery in tort of damages for purely economic loss." *Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc.*, 106 Ohio St.3d 412, 2005-Ohio-5409, ¶ 6. The underlying duties in this case are contractual and "[t]ort law is not designed \* \* \* to compensate parties for losses suffered as a result of a breach of duties assumed only by agreement. That type of compensation necessitates an analysis of the damages which were within the contemplation of the parties when framing their agreement. It remains the particular province of the law of contracts." *Floor Craft Floor Covering, Inc. v. Parma Community Gen. Hosp. Assn.*, 54 Ohio St.3d 1, 7 (1990), quoting *Sensenbrenner v. Rust, Orling & Neale Architects, Inc.*, 236 Va. 419, 425 (1988).

{¶17} For the foregoing reasons, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All other pending motions are DENIED as moot. All previously scheduled events are VACATED. 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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PATRICK M. MCGRATH  
Judge

cc:

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