**[Cite as *Overcasher v. Kent State Univ. Bd. of Trustees,* 2014-Ohio-5946.]**

# Court of Claims of Ohio

The Ohio Judicial Center
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DAVID OVERCASHER

Plaintiff

v.

KENT STATE UNIVERSITY BOARD OF TRUSTEES

Defendant

Case No. 2013-00071

Magistrate Holly True Shaver

DECISION OF THE MAGISTRATE

**{¶1}** Plaintiff brought this action alleging claims of defamation, intentional infliction of emotional distress, and tortious interference with a contract interest.[1] The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

**{¶2}** In the fall of 2012, plaintiff was enrolled as a student at Kent State University's (KSU) Stark Campus. Along with a computer course and a writing course, plaintiff was enrolled in a course known as "Exploring Business" (EB), which was taught by an adjunct professor, James Williams. Plaintiff did not attend the first EB class because he was attending a therapy session for depression.

**{¶3}** In the EB class, students were grouped into teams with three or four members. A team leader and a Chief Operating Officer (COO) were selected for each team. The teams were to work on a concept created by Williams, known as "Jim, Inc." which was designed to model a real business. On plaintiff's team, a student named

[1]Plaintiff's claims of violation of his right to privacy, negligent infliction of emotional distress, violation of R.C. 149.43, and violation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232(g), were dismissed by the court on April 26, 2013.

Sasha Kamp was selected as the COO, and a student named Cody Workman was chosen as the team leader.

**{¶4}** Plaintiff's claims arise from email that Professor Williams sent. The first email, dated September 7, 2012, was sent to all of the students in the EB class. In the email, Williams states that he has attached three documents: the course syllabus; the team configuration; and the master grading spread sheet. (Plaintiff's Exhibit 1.) Although plaintiff did not present either the course syllabus or the team configuration list at trial, the master grading spread sheet is included in Plaintiff's Exhibit 1. Williams states in his email:

**{¶5}** "The team configurations continue to frustrate with the inordinate number of students dropping the course but [I] am understanding that is true in many classes, this semester across the campus. I simply do not understand why!

**{¶6}** "On the Master grading spread sheet, you can see those that I still have not received your pre-class assignment thus you have a zero for the Block of Work. You have had more than enough time plus it was a PRE-CLASS assignment to be handed in on day one. Also, there are still some students habitually coming in late and two late arrivals equals a full absence. Being late is a choice and a habit! Make the right choice!

**{¶7}** "The Teams should be formed and operational by now with your first team block of work now readying for presentation; your business plan. Engage this work for this semester and enjoy the learning process; that is a CHOICE!" (Plaintiff's Exhibit 1.)

**{¶8}** The attached master grade report contains a list of the students in the class and a column titled "We are here," with a possible point total of 500 points. The court notes that the report shows that the students who turned in the pre-class assignment have the number "500" near their name in the column, while a blank space indicates that the assignment had not been turned in. There are no other grades listed, and the students either have the number 500 or a blank space near their names. Plaintiff's

name has a blank space in the column, indicating that he had not turned in the pre-class assignment.

**{¶9}** The second email from Williams is dated September 11, 2012, and was sent to plaintiff, Kamp, and Workman, at 12:37 p.m. The portions of the email that relate specifically to plaintiff are as follows:

**{¶10}** "Mr. Overcasher, it has come to my knowledge that apparently you are upset about something with the class or me. You are perfectly within your right to like or dislike the class or me; that is your choice. It has also come to my attention of your apparent intention to go to the Dean to discuss something about the class or me. It is there I have decided, after speaking with Cody, your team leader, and Sasha, your COO, to take this approach."

**{¶11}** Williams goes on to discuss how in the syllabus, specifically, the Jim, Inc. Organization document, he has outlined a specific process to address issues with either the class or him personally; that a student should go through the chain of command of the team leader, then to Professor Williams. Then, if not resolved, the student should go "outside the framework of our class" to resolve the issue.

**{¶12}** The next paragraph states: "To this moment, to my recollection, I have not had a single email from you on either an article response, nor the two personal emails I sent you. So if there is an issue to be dealt with, you have had every opportunity to voice it but you have chosen not to. This has caused stress within your team and team leader as well as your COO. They have enough to do without additional stress of this nature."

**{¶13}** The next paragraph again summarizes the issue resolution process. The final paragraph states: "I believe the best defense is a solid offence [sic] so I am taking the offense in this matter for the teams must gel as the real work is coming and things like this impede the cohesion. My expectation of you as well as the other students I have is for you to engage the work, be an active member of the work teams and

operate in a respectful and transparent manner as I do for example for all my students. If I in some way have offended you, I am very sorry but I have [no] idea what that might be for you have said nothing to me verbally nor via email. So threatening to go to the Dean clearly goes outside the boundary markers of our course. Please know that I certainly have no fear about the Dean in any way. I have no idea what your issue is because you have not voiced it to me.

**{¶14}** "There is a process; use it!" (Plaintiff's Exhibit 2.)

**{¶15}** The third email is dated September 11, 2012, at 10:28 p.m., which states:

**{¶16}** "Mr. Overcasher, you have now missed yet another class, have not returned any responses to my emails and thus have added zero value to this class now in the third week. I am recording you an 'NF' status meaning you are failing this course. You can have that removed by withdrawing officially from this class. The team needs you. The class needs you but! You leave me no choice.

**{¶17}** "Cody, you see your team you now have so let's make it work as I am sure you will. Thank you for your leadership[.]" (Plaintiff's Exhibit 3.) Although the exhibit does not show who received this email, plaintiff testified that Williams sent this to other students, and the context of the email shows that it was at least sent to plaintiff and Workman. Plaintiff testified that he felt humiliated when Williams sent the emails to other students in the class. Plaintiff eventually withdrew from all of his classes, and although he testified that the primary reason for doing so was for financial reasons, he stated that Professor Williams' conduct was a contributing factor to his decision to withdraw. Plaintiff admitted that he missed at least two EB classes before he withdrew.

**{¶18}** The final email that Williams sent about plaintiff was on September 18, 2012, to Ruth Capasso, Associate Dean. With regard to plaintiff, Williams stated: "Overcasher has rightly withdrawn from the class. Never contributed one iota to the class process, weird acting, smart mouth to his team mates and told his team leader he was going to the Dean (which he has done). I confronted him on his lack of

performance, attitude and told him if he felt he would or could not conform to the team environment and his role he should drop the class and that I would not be threatened by anyone on any level about going outside the system of the class structure. Just some background so you can know." (Plaintiff's Exhibit 6.)

**{¶19}** Plaintiff testified that he had a meeting with Ruth Capasso to discuss Williams' behavior. After he met with her, he realized that he had missed a deadline to file a grievance against Williams. Plaintiff testified that his transcript is on "hold;" that he would like to finish his college education but that he cannot attend another college without a transcript; that he owes defendant money for the last semester courses he was enrolled in, but that even if he paid the debt, the grade of NF would affect him negatively at another school.

**{¶20}** On cross-examination, plaintiff acknowledged that he had enrolled in the EB course in the fall of 2009 and had received a failing grade by a different professor; that he enrolled in EB in the fall of 2010 and then shortly withdrew after a few weeks of classes; and that he attempted the course again in the fall of 2012 with Williams.

**{¶21}** James Williams testified that he has been an adjunct professor at KSU for approximately 6 or 7 years; that he worked for 36 years at Goodyear, and that he teaches leadership and management courses. He described the EB course as a "survey" course, to teach real-life business experience. Williams testified that he had served in the military and that he had a certain structure and chain of command in his classes. Williams stated that if students did not choose to invest in the class and participate, the peer competitiveness would "drown them."

**{¶22}** According to Williams, plaintiff missed the first two or three classes, and arrived late a few times. Plaintiff's approach to the class concerned Williams because he tries to motivate every student, and plaintiff did not show interest in the class.

**DEFAMATION**

**{¶23}** Defamation is the publication of a false statement "made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in his or her trade, business or profession." *A & B-Abel Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 7, 1995-Ohio-66.

**{¶24}** Upon review of Williams' series of email, the court cannot conclude that any of Williams' statements about plaintiff were false. Plaintiff did not testify that he turned in the pre-class assignment, and he admitted that he missed at least two of the EB classes before he withdrew from the course. Plaintiff also testified that he did not communicate directly to Williams to resolve any problems with him. The court finds that plaintiff cannot prove that any of Williams' statements about him were false. Therefore, plaintiff has failed to prove any defamation claim by a preponderance of the evidence.

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

**{¶25}** Under Ohio law, a plaintiff claiming intentional infliction of emotional distress must show: "(1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff, (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community, (3) that the actor's actions were the proximate cause of the plaintiff's psychic injury, and (4) that the mental anguish suffered by the plaintiff is serious and of a nature that no reasonable man could be expected to endure it." *Burkes v. Stidham*, 107 Ohio App.3d 363, 375 (8th Dist.1995).

**{¶26}** "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even

that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. * * * The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 374-5 (1983).

**{¶27}** The Tenth District Court of Appeals has also addressed this issue and held that "major outrage is essential to the tort; and the mere fact that the actor knows that the other will regard the conduct as insulting, or will have his feelings hurt, is not enough. Only conduct that is truly outrageous, intolerable and beyond the bounds of decency is actionable; persons are expected to be hardened to a considerable degree of inconsiderate, annoying and insulting behavior. Insults, foul language, hostile tempers, and even threats must sometimes be tolerated in our rough and tumble society." *Strausbaugh v. Ohio Dept. of Transp.*, 150 Ohio App.3d 438,444, 2002-Ohio-6627, ¶ 15 (10th Dist.).

**{¶28}** Upon review of the statements contained in the email, the court cannot conclude that Williams' statements were extreme and outrageous. Therefore, the court finds that plaintiff has failed to prove his claim of intentional infliction of emotional distress by a preponderance of the evidence.

**TORTIOUS INTERFERENCE WITH A CONTRACT INTEREST**

**{¶29}** "The torts of interference with business relationships and contract rights generally occur when a person, without a privilege to do so, induces or otherwise purposely causes a third person not to enter into or continue a business relation with another, or not to perform a contract with another." *A & B-Abel/ Elevator Co., Inc., supra*, quoting *Haller v. Borror Corp.*, 50 Ohio St.3d 10, 16 (1990).

**{¶30}** Plaintiff essentially argues that Williams' conduct of recording his grade as an NF status, and informing him that he could have that status removed from his transcript by withdrawing from the course, somehow constitutes a tortious interference

with his student contract with defendant. However, the key element of intentional interference with a contract is interference by someone who is not a party to the contract. *Garg v. Venkataraman*, 54 Ohio App.3d 171, 174 (9th Dist.1988). Williams was employed by defendant, and there is no allegation that Williams contacted any third person and told that person not to enter into any contract with plaintiff. Although plaintiff argued at trial that Williams' action of recording a failing grade for the EB class was preventing him from obtaining his transcript, plaintiff admitted that the reason that his transcript was being held was due to his own failure to pay his outstanding balance on his student account. Therefore, the court finds that plaintiff has failed to prove any claim of tortious interference with a contract interest by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

**{¶31}** *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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HOLLY TRUE SHAVER
Magistrate

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**Filed July 11, 2014**
**Sent To S.C. Reporter 10/30/15**