

# Court of Claims of Ohio

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65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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KERRIE SHISILA

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2013-00643

Judge Patrick M. McGrath  
Magistrate Anderson M. Renick

## ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On October 1, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On October 22, 2014, plaintiff filed an untimely response that was not signed by counsel. The motion for summary judgment is now before the court for a non-oral hearing.

{¶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 Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} In the fall semester of 2008, plaintiff entered the masters of occupational therapy program at defendant Cleveland State University (CSU). Plaintiff subsequently obtained a one-year leave of absence due to severe depression which interfered with her schoolwork. Plaintiff began her coursework in the fall 2009 semester, and in March 2010 she was notified by Susan Wayne, the Academic Fieldwork Coordinator for the program, that Wayne intended to report that plaintiff had acted in an unprofessional and disrespectful manner, including using inappropriate language, which were violations of the program's student handbook. (Plaintiff's Deposition Exhibit C.) According to Wayne, plaintiff "demonstrated serious behavioral and professional judgment issues throughout her time at CSU." (Defendant's Exhibit B.) Following a review of the conduct report and a meeting with the interim director of the program, plaintiff was placed on probation on April 14, 2010. At plaintiff's request, she was assigned a new faculty advisor. (Plaintiff's Deposition Exhibit D.)

{¶5} Plaintiff was removed from probation in the spring 2011 semester and she began her Level II fieldwork experience in September 2011 at the Cuyahoga County Board of Developmental Disabilities (CCBDD). Vicky Presnell, a CCBDD occupational therapist who served as plaintiff's fieldwork supervisor during the fall 2011 semester, averred that plaintiff struggled with interpersonal interaction skills which Presnell believed were critical in the field of occupational therapy. (Defendant's Exhibit C.) According to Presnell, plaintiff showed a lack of initiative and follow-through on assignments, admitted disinterest in the school-based setting, and exhibited student

“safety issues.” Presnell attempted to help plaintiff by modifying her fieldwork assignments, developing an agreed work timeline, and supervising plaintiff on a full-time basis. On November 8, 2011, Presnell informed plaintiff that she had earned an unsatisfactory score on the midterm assessment and that Presnell had discussed plaintiff’s progress with Wayne and Presnell’s supervisor. Presnell developed a “learning contract” which included expectations and deadlines for plaintiff; however, plaintiff continued to exhibit poor professional judgment, inappropriate behavior, and “safety risks” which are described in Presnell’s affidavit.

{¶6} On December 15, 2011, Presnell met with plaintiff to discuss her concerns about plaintiff’s performance. According to Presnell, plaintiff “responded by yelling, crying, and accusing [Presnell] of being a horrible occupational therapist and supervisor \* \* \* [plaintiff] stated that when she committed suicide it would all be [Presnell’s] fault.” (Defendant’s Exhibit C, ¶ 8.) Plaintiff ultimately earned a failing grade in her Level II Fieldwork course, which was required to complete the program. Glenn Goodman Ph.D., the director of defendant’s program, averred that plaintiff’s scores on judgment and safety items did not satisfy the criteria under the American Occupational Therapy Association guidelines for fieldwork. (Defendant’s Exhibit A.)

{¶7} On December 20, 2011, Dr. Goodman notified plaintiff that pursuant to the student handbook, she would be dismissed from the program because she failed her Level II fieldwork course. Three days later, plaintiff was notified by the College of Graduate Studies that she had been dismissed from the university. Plaintiff petitioned for re-admission; however, according to Dr. Goodman, defendant’s faculty unanimously agreed that the decision to dismiss plaintiff was correct and her petition for re-admission should be denied. (Plaintiff’s Deposition Exhibit R.) On February 6,

2012, defendant's College of Graduate Studies also denied plaintiff's request for re-admission, finding no compelling reason to oppose the recommendation of the program committee. (Plaintiff's Deposition Exhibit T.)

{¶8} On February 27, 2012, plaintiff filed a student grievance alleging that defendant's faculty had failed to accommodate her disabilities. Dr. Goodman appeared before the grievance board and presented a memorandum in response to plaintiff's claims. The student grievance board recommended that plaintiff be re-admitted into the program; however, that decision belonged to defendant's president, Ronald Berkman. (Defendant's Exhibit A. ¶ 16.) President Berkman requested additional information and, on May 10, 2012, he notified plaintiff that he declined to accept the student grievance board's recommendation. President Berkman stated that his decision was based upon his review of the records which showed that plaintiff's fieldwork supervisors "went far beyond what would be expected" in providing plaintiff an opportunity to succeed and that plaintiff's disability did not play any role in the decision to dismiss her from the program. (Plaintiff's Deposition Exhibit W.) Plaintiff unsuccessfully challenged defendant's decision by filing an action with the Ohio Civil Rights Commission.

{¶9} In her complaint, plaintiff alleges breach of contract.<sup>1</sup> Plaintiff asserts that defendant committed a breach of its contract with her and that defendant's conduct, including the decision not to accept the recommendation of the student grievance board, was arbitrary, capricious, and constituted a substantial departure from accepted academic norms.

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<sup>1</sup>On February 7, 2014, the court issued an entry dismissing plaintiff's tortious interference claim. Plaintiff failed to allege defendant contacted, interacted, or interfered with plaintiff's prospective or current business or employment relationship.

{¶10} 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, catalog, and other guidelines supplied to students. *Bleicher v. Univ. of Cincinnati College of Med.*, 78 Ohio App.3d 302, 308 (1992); *Embrey v. Central State Univ.*, 10th Dist. Franklin No. 90AP-1302 (Oct. 8, 1991), citing *Smith v. Ohio State Univ.*, 53 Ohio Misc.2d 11, 13 (1990). In addressing an alleged breach of such contract, a trial court is required to 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, supra*, at 308, 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 whether the faculty action was arbitrary and capricious. *Bleicher, supra*.

{¶11} The evidence submitted by defendant shows that CSU attempted to accommodate plaintiff and address her concerns about issues that interfered with her studies. As stated above, plaintiff was granted an initial one-year deferment before she began classes. In her affidavit, Wayne explained what she believed were plaintiff’s “serious behavioral and professional judgment issues throughout her time at CSU.” After plaintiff was placed on probation, she received additional attention in an effort to help her succeed. Presnell agreed to serve as plaintiff’s primary supervisor and both Wayne and Presnell interacted with plaintiff through phone conversations, email, and in-person meetings. Plaintiff was counseled, placed on probation, and

provided with a learning plan to help her work toward earning a passing score for her fieldwork; however, she earned a failing grade for the fieldwork course.

{¶12} Even if the court accepted plaintiff's untimely and unsigned response to defendant's motion, plaintiff has not provided any evidence to show that defendant violated either the provisions of the student handbook or any other contractual provision.

{¶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-Ohio-219.

{¶14} Under the circumstances, a reasonable trier of fact could not possibly find that President Berkman failed to exercise professional judgment in making the decision both to decline to accept the student grievance board's recommendation and to accept the recommendation of the Occupational Therapy Program Committee that plaintiff be dismissed from the program. Therefore, defendant is entitled to judgment on plaintiff's breach of contract claim as a matter of law.

{¶15} For the foregoing reasons, and construing the facts most strongly in plaintiff's favor, the court finds that there is no genuine issue as to any material fact and that defendant is entitled to summary judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in

favor of defendant. 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:

Amy S. Brown  
Emily M. Simmons  
Assistant Attorneys General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

Cheryl A. Alikhan  
P.O. Box 360382  
Strongsville, Ohio 44136-0007

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