

**IN THE COURT OF CLAIMS OF OHIO**

TONJA M. HALL

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2014-00512-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

**FINDINGS OF FACT**

{¶1} Plaintiff, Tonja M. Hall, filed a complaint with this court on May 27, 2014 against defendant, Cleveland State University (“CSU”), alleging that Cleveland State University professor, Andrew Gross, failed to provide her with reasonable accommodations for her disability. Plaintiff asserts that in her MBA500 class, defendant required her to sit in the back of the classroom, which presented her with a challenge in viewing material that was at the front of the classroom. She alleges that this caused pain in her neck. Further, she asserts that as a result of defendant’s unwillingness to accommodate her disability needs, she was forced to discontinue attending class and was subsequently prevented from dropping the class, which resulted in a failing grade. Plaintiff seeks \$1,673.64 in damages for reimbursement of the course fee. Plaintiff was not required to pay the \$25.00 filing fee.

{¶2} Defendant filed an investigation report in which it denied “that any Cleveland State University employee discriminated against Hall, or denied her the educational accommodations identified by the CSU Office of Disability Services.” Defendant alleges that Mr. Gross “acquiesced to Hall’s request that she sit in the last row so that she could stand occasionally during the long class period.” Further, defendant asserts that Hall

displayed disruptive classroom behavior, which led to formal complaints. Defendant asserts that Hall's disruptive behavior did not improve despite defendant's efforts to discuss it with Hall. The Office of Judicial Affairs notified her that she faced a violation of the student conduct code due to her disruptive classroom behavior. Defendant states that Hall did not participate in the judicial process and subsequently quit attending the MBA500 class. Defendant asserts that Hall requested a late withdrawal from Mr. Gross' class and Mr. Gross indicated that he could not recommend the late withdrawal. Therefore, defendant provided Hall with her educational accommodations, and was not the cause of her failed course grade. Plaintiff has not filed a response to the Investigation Report.

#### CONCLUSIONS OF LAW

{¶3} Plaintiff has essentially contended that defendant was negligent in having her sit in the back of the classroom. In order to prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that defendant's breach proximately caused her injuries. *Armstrong v. Best Buy Co. Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶4} "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone." *Cascone v. Herb Kay Co.*, 6 Ohio St.3d 155, 160, 451 N.E.2d 815 (1983), quoting *Neff Lumber Co. v. First Natl. Bank of St. Clairsville, Admr.*, 122 Ohio St. 302, 309, 171 N.E. 327 (1930). In a situation such as the instant claim, expert testimony is required regarding the issue of causation and that testimony must be expressed in terms of probability. *Stinson v. England*, 69 Ohio St. 3d 451, 454, 633 N.E.2d 532 (1994). In the case at bar, the evidence does not

demonstrate that the pain to plaintiff's neck was the result of any negligence on the part of defendant. As shown by the Office of Disability Services Memo, defendant was given no information that would put it on alert for a potential neck injury due to the placement of plaintiff's seat. Further, it appears that defendant was complying with plaintiff's requests when defendant placed plaintiff in the back of the classroom. The evidence presented suggests that plaintiff requested to sit in the back of the classroom so that she would be afforded the opportunity to stand or exit the classroom as needed. The court finds that defendant had cooperated with plaintiff to provide her with the accommodations that she needed for her disability. Further, the court finds that plaintiff has failed to prove her neck injuries were proximately caused by defendant's acts.

{¶5} Plaintiff has also raised a breach of contract claim in requesting compensation for the failed course. Although plaintiff did not point to a specific contract provision that defendant allegedly breached, plaintiff essentially argues that defendant did not provide her with the ability to withdraw from the course, which resulted in a failing grade. It is well-settled that the relationship between a university 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 (10th Dist.1992). In addressing an alleged breach of such contract, a trial court is required to defer to academic decisions of a university unless it perceives "such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." *Id.*, quoting *Regents of the Univ. of Michigan 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*, see also *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 91 (1978). The evidence provided shows that defendant had submitted formal complaints to the Office of Judicial Affairs regarding plaintiff's disruptive classroom behavior. Plaintiff did not participate in

the judicial process, did not return to the class, nor did she withdraw from the class by the deadline. The class withdrawal deadline was March 28, 2014; plaintiff did not request a withdrawal until May 5, 2014. In response to plaintiff's late withdrawal request, defendant found that it could not allow the late withdrawal. Plaintiff subsequently was given a failing grade in the course. Upon review of the evidence, the court cannot conclude that defendant's decision on plaintiff's request was arbitrary and capricious. In fact, evidence shows that plaintiff's poor performance in the class, both in classwork and behavior, most likely would have resulted in failure of the course. Therefore, the court finds that plaintiff has failed to prove her claim of breach of contract by a preponderance of the evidence. Consequently, judgment is rendered in favor of defendant.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

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MARK H. REED  
Clerk

Entry cc:

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Cleveland, Ohio 44106

Cleveland State University  
Parker-Hannifin 227  
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