[Cite as *McNally v. Department of Rehabilitation and Correction*, 2015-Ohio-5613.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

MICHELLE MCNALLY

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00682

Judge Patrick M. McGrath
Magistrate Holly True Shaver

DECISION

{¶1} On February 19, 2015, defendant filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C) and/or summary judgment pursuant to Civ.R. 56(B). On March 12, 2015, the court converted the motion to one for summary judgment. With leave of court, on March 23, 2015, plaintiff filed a response. Defendant's 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 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} According to her complaint, in 2011, plaintiff was working as a nurse practitioner at Wheeling Hospital in West Virginia. Plaintiff had incurred approximately $55,000 in student loan debt to complete her nursing degree. On March 29, 2011, Rhonda Johnson, an employee of defendant, contacted plaintiff about two new nurse practitioner positions in the Belmont, Ohio, area. Johnson sent plaintiff an email that stated the following: "One [position] will be located at the Belmont Correctional Institution which offers $60K loan repayment for a two year commitment and the (sic) will be located at Noble Correctional Institution. Noble's loan payment application is pending." (Exhibit E.) On June 1, 2011, Johnson sent plaintiff an email which contained a general overview of the positions and the benefits of working for defendant. Under "notable attributes of working with the state of Ohio" Johnson stated: "Thirteen sites have student loan repayment of $60,000 for a two year commitment." (Exhibit G.) Plaintiff asserts that due to defendant's offer of loan repayment, she applied for the Belmont position.

{¶5} On June 20, 2011, Johnson sent plaintiff an email informing her that she had been selected for the position at Belmont. Plaintiff further alleges that on the same date, Johnson called her to offer her the position. Plaintiff asserts that during that phone conversation, Johnson again informed her that she would receive up to $60,000 in loan repayments for a two-year commitment with Belmont Correctional Institution. Plaintiff accepted defendant's offer of employment based in part on the alleged promise of loan repayment.

{¶6} After she began her employment, plaintiff learned that the loan repayment program was funded through the National Service Health Corps (NSHC), and that loan repayment was not guaranteed. On February 1, 2012, plaintiff emailed Johnson to clarify her loan repayment opportunities. Johnson explained that "eligibility for the loan repayment program was a recruitment tool that I used because I believed it to be true." Although plaintiff has applied to the program multiple times, her applications for loan repayment have been declined.

{¶7} Plaintiff asserts claims of breach of contract and promissory estoppel. Defendant asserts in its motion that inasmuch as plaintiff's terms of employment are governed by a collective bargaining agreement (CBA), this court lacks jurisdiction over her

claims for breach of contract. In support of its motion, defendant filed the affidavit of Kimberly Rowe, wherein she avers as follows:

{¶8} "1. I am employed by the Ohio Department of Rehabilitation and Correction (DRC) as the Human Capital Management Admin. 2.

{¶9} "2. I have personal knowledge and am competent to testify to the facts contained in this Affidavit.

{¶10} "3.Michelle McNally was hired by DRC as a Nurse Practitioner at Belmont Correctional Institution on August 15, 2011.

{¶11} "4. Michelle McNally's position as a Nurse Practitioner is a collective bargaining position, governed by the collective bargaining agreement available at http://www.das.ohio.gov/Portals/0/DASDivisions/CollectiveBargaining/pdf/Finai%201199%20Contract.pdf

{¶12} "5. Attached as Exhibit A-1 is a true and accurate copy of Article I of the collective bargaining agreement."

{¶13} The attached portion of the CBA contains an integration clause and states that no verbal statement shall supersede any provisions of the agreement.

{¶14} In response, plaintiff acknowledges that she was a member of a CBA, but asserts that that fact does not preclude her breach of contract claims. However, R.C. 2743.03(A)(1) provides in part: "The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code * * *." It is well-settled that "[w]hile R.C. 2743.02(A)(1) vests exclusive subject-matter jurisdiction over suits previously barred by sovereign immunity, R.C. 4117.09(B)(1) expressly allows for suits alleging violations of collective bargaining agreements to be brought in common pleas courts." *Moore v. Youngstown State University*, 63 Ohio App. 3d 238, 242 (10th Dist.1989).

{¶15} Inasmuch as plaintiff's employment was subject to a CBA, R.C. 4117.09(B)(1) specifically creates a right of action over such claims and limits the jurisdiction over this suit to the common pleas courts. *Id*. Accordingly, this court has no jurisdiction over plaintiff's breach of contract claim and it shall be dismissed.

{¶16} Promissory estoppel is defined as follows: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." Restatement of the Law 2d, Contracts,

Section 90 (1973); *McCroskey v. State*, 8 Ohio St.3d 29, 30 (1983). To establish a claim for promissory estoppel, plaintiff must prove: "'(1) a clear and unambiguous promise, (2) reliance by the party to whom the promise was made, (3) the reliance is reasonable and foreseeable, and (4) the party relying on the promise must have been injured by the reliance.'" *Reif v. Wagenbrenner*, 10th Dist. Franklin No. 10AP-948, 2011-Ohio-3597, ¶ 42, quoting *Callander v. Callander*, 10th Dist. Franklin No. 07AP-746, 2008-Ohio-2305, ¶ 33.

{¶17} Plaintiff filed the deposition of Rhonda Johnson, along with the exhibits she identified during the deposition, to support her claim for promissory estoppel. During her deposition, Johnson discussed an email dated July 29, 2011, from plaintiff wherein plaintiff states the following: "I am looking forward to starting my new job at Belmont Correctional Institution on August 15th! My understanding is that I am eligible for student loan repayment for a 2 year commitment. Do you know where I can find the information to apply for student loan repayment? I would appreciate any assistance." (Exhibit I.) In response to that email, Johnson forwarded plaintiff the training packet for the loan repayment program and informed plaintiff that the closing date for that year was May 26 and that she might have to wait until the following year to file an application. (*Id*.)

{¶18} Johnson also identified an email dated February 1, 2012, that plaintiff sent to her regarding plaintiff's efforts to apply for loan repayment. (Exhibit J.) In that email, plaintiff states that when she was hired, Belmont was listed as an HPSA score of 14.[1] Plaintiff continues: "As you know, the higher the score the more likely you will be eligible for repayment." *Id*. Plaintiff then stated that she was notified by HPSA that they had reviewed Belmont and changed Belmont's score from 14 to 3. According to plaintiff, the change in score meant that her application for loan repayment would not be reviewed until after the May 15, 2012 deadline, and plaintiff noted that the potential for funds from the program to be exhausted was extremely high. Plaintiff continued: "Please understand that this was a huge incentive for me to take this position as a nurse practitioner at Belmont * * * I am asking what will be done about the student repayment of $60,000 that was guaranteed to me after my interview?" *Id*.

{¶19} In response to that email, Johnson replied: "Eligibility for the loan repayment program was a recruitment tool that I used because I believed it to be true. Our agency does not have the authority to promise payment of a program that we do not manage. We

can also state that you can receive up to the amount allotted in the program after you meet criteria." *Id*. Johnson further explained that the funding approved by the federal government was insufficient for the number of applicants and she urged plaintiff to consider the other benefits of state employment, but acknowledged that the change in score was quite drastic and added that she did not have any explanation for a scoring system that she neither created nor had input about. *Id*.

{¶20} In her deposition, Johnson identified the job description for the position that plaintiff accepted. (Exhibit K.) The job description itself does not mention any loan repayment program. *Id*. Johnson identified the training and support package about the NHSC, which explains that NHSC is a federally funded loan repayment program that has an award cycle each year; that awards are distributed on a first come, first serve basis; and, that the cycle may close earlier than the date stated in the materials if funds are depleted. (Exhibit N.) Johnson also testified that she was certain that she told plaintiff that NHSC loan repayment was not guaranteed, because the program was based upon both the institution's score and the amount of available federal funds. (Johnson's deposition, p. 62.) Johnson also stated that the email she sent plaintiff prior to her acceptance of employment was not the only source of information that she gave plaintiff. Johnson explained that "any candidate that I'm trying to recruit would never solely just have this email * * * there would be no way for it to be misleading because I would go into detail what that statement means." (Johnson deposition, p. 70.) Johnson also testified:

{¶21} "Q: Did you ever tell Michelle McNally unequivocally that she was not guaranteed $60,000 in student loan repayments?

{¶22} "A: Yes, because I have no control over that." (Johnson deposition, p. 72.)

{¶23} Construing the evidence most strongly in plaintiff's favor, her claim of promissory estoppel fails as a matter of law. It is well-settled that public officers cannot bind the state by acts beyond their authority. *See Drake v. Med. College of Ohio*, 120 Ohio App.3d 493, 496, (10th Dist.1997); *Marbury v. Central State Univ.*, 10th Dist. Franklin No. 00AP-597, 2000 Ohio App. LEXIS 5815 (Dec. 14, 2000). The evidence shows that by August 1, 2011, before her first day of employment, plaintiff had received the training packet which clearly sets forth the nature of the federal loan repayment program. (Exhibit N.) Moreover, even if Johnson had told plaintiff that the loan repayment program was

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[1]If a correctional institution met federal criteria for designation as a Health Professional Shortage Area (HPSA), the NHSC loan repayment program allowed for eligible clinicians to apply for loan repayment.

guaranteed, "[m]istaken advice or opinions of a governmental agent do not give rise to a claim based on promissory estoppel." *Drake, supra*, citing *Halluer v. Emigh*, 81 Ohio App.3d 312, 318, (9th Dist.1992); *see also Anderson v. Ohio Univ.*, 10th Dist. Franklin No. 08AP-154, 2008-Ohio-4901 (noting that estoppel generally does not apply against the state or its agencies).

{¶24} Construing the evidence most strongly in favor of plaintiff, the court finds that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law as to plaintiff's claim of promissory estoppel. Accordingly, defendant's motion for summary judgment shall be granted as to that claim. Inasmuch as this court lacks jurisdiction over plaintiff's breach of contract claim, that claim shall be dismissed without prejudice.

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PATRICK M. MCGRATH
Judge

(Exhibit N.)

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JUDGMENT ENTRY

{¶25} A non-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, as to plaintiff's claim of promissory estoppel. Plaintiff's claim of breach of contract is DISMISSED without prejudice for lack of subject matter jurisdiction. 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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