

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Kevin J. Tate, :  
 :  
 Plaintiff-Appellant, :  
 :  
 v. : No. 10AP-1201  
 : (C.C. No. 2009-04963)  
 Owens State Community College, : (ACCELERATED CALENDAR)  
 :  
 Defendant-Appellee. :

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D E C I S I O N

Rendered on July 12, 2011

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*Kevin J. Tate, pro se.*

*Michael DeWine, Attorney General, and Jennifer Anne Adair,*  
for appellees.

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APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶1} Plaintiff-appellant, Kevin J. Tate, appeals from a judgment of the Court of Claims of Ohio, in which the court granted defendant-appellee's motion for summary judgment. For the following reasons, we affirm the judgment of the trial court.

{¶2} Appellant assigns six errors for our consideration:

[1.] The trial court ERRED in scheduling and then holding the non-oral hearing on Defense's Motion for Summary Judgment.

[II.] The trial court ERRED in denying Plaintiff's Motion for Extension of Time in responding to Defense's Motion for Summary Judgment.

[III.] The trial court ERRED in granting Defense's Motion for Summary Judgment based solely on the Academic Decisions of Defense being immune from civil liability.

[IV.] The trial Court ERRED in declaring Plaintiff's response to Motion for Summary Judgment moot.

[V.] The trial court ERRED in declaring the Plaintiff's Motions for Leave to file a Motion for Summary Judgment, and his Motion for Summary Judgment moot.

[VI.] The trial Court ERRED in delaying the entering of final Decision and Judgment.

{¶3} Between January 2006 and June 2007, appellant was enrolled in the Radiography program at Owens State Community College ("Owens") as a medical imaging/radiography student. While at Owens, appellant received a handbook containing all relevant rules and regulations of the school and of the program. On July 20, 2006, appellant was corrected for "not staying in the assigned area, not observing or participating in the exam, and making repetitive mistakes." (October 4, 2010 Motion for Summary Judgment, at 3.) On September 28, 2006, appellant was disciplined for "failure to maintain professional demeanor." Id. at 4.

{¶4} On December 6, 2006, appellant was again disciplined, this time for "inconsiderate treatment \* \* \* and failure to perform." Id. at 5. As this was his second violation, appellant was placed on an academic readmission plan. By spring of 2007, appellant had met the requirements of the plan, and was readmitted to the program.

{¶5} In both cases, the handbook provided by the school gave guidelines and spelled out the violations appellant was accused of. Additionally, in each case, appellant

met with various higher-level members of the department, and was warned about the ramifications of his current actions and the potential future impact of such actions.

{¶6} On June 22, 2007, appellant preformed a lumbar spine procedure without supervision or permission, resulting in his third disciplinary action. As a result of this third action, appellant met with the Dean of the School of Health Sciences for Owens and was immediately and permanently dismissed from the program.

{¶7} On May 19, 2009, appellant initiated this lawsuit against appellee, alleging a breach of contract. On June 17, 2009, appellee filed a motion to dismiss, which, on September 23, 2009, was partially granted and partially denied; the court determined that there was a cause of action pled by appellant. The trial court set the date of trial to be January 3 and 4, 2011, with a dispositive motion deadline of October 4, 2010.

{¶8} On October 4, 2010, appellee filed a motion for summary judgment pursuant to Civ.R. 56(B). On November 1, 2010, this motion came before the trial court for a non-oral hearing. On November 2, 2010, appellant filed a motion for extension of time, as well as a motion for summary judgment and a response to appellee's motion for summary judgment. None of these were timely filed. On December 16, 2010, the trial court granted appellee's motion, and denied all three motions from appellant as moot.

{¶9} By his first assignment of error, appellant alleges that the trial court erred in scheduling and holding a non-oral argument on appellee's motion for summary judgment. At oral argument, appellant withdrew this assignment of error.

{¶10} By his second assignment of error, appellant alleges that the trial court erred in denying appellant's motion for extension of time in order to respond to appellee's motion for summary judgment.

{¶11} Appellant basis this error on two main arguments: the first being that he filed the motion for extension of time; the second being that, as a pro se litigant, he is entitled to leniency. In neither argument does appellant present a legal argument as to why the court was wrong to deny his motion.

{¶12} The legal standard for an appellate review of a trial court's decision regarding a motion for extension of time is whether the court abused its discretion. *State ex rel. Sawyer v. Cuyahoga Cty. Dept. of Children and Family Servs.*, 110 Ohio St.3d 343, 345, 2006-Ohio-4574. An abuse of discretion is when the court has an "unreasonable, arbitrary, or unconscionable attitude." *State ex rel. Stewart v. State Emp. Relations Bd.*, 108 Ohio St.3d 203, 2006-Ohio-661, quoting *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183, 1997-Ohio-221.

{¶13} Appellant's first argument is that he properly filed the motion for extension of time and, as such, the court should have granted it. Appellant is correct in stating that, when documents are submitted the day of the deadline, they are considered as being timely filed. Fed.Civ.R. 6(A)(1)(C); Civ.R. 6(A). He is also correct in arguing that the court has the power to extend the deadline. Civ.R. 6(B)(2). Not mentioned by appellant, however, is that relevant Ohio law dictates that the party in opposition to a motion shall submit their response "within fourteen days after service upon him of movant's motion." L.C.C.R. 4(C).

{¶14} While appellant is correct in his legal arguments, the facts do not support the conclusion he proposes. Appellant was functioning under the assumption that the deadline to file a response was November 1, 2010, that being the date of the non-oral hearing on the motion. The deadline, however, was October 21, 2010. On October 7,

2010, the trial court scheduled the date for a non-oral hearing on appellee's motion for summary judgment, thus starting the 14-day window in which appellant was to respond. This window closed on October 21, 2010. Appellant's motion for extension of time was not filed until November 1, 2010, thus placing it far outside of the proper response date. As such, there is no "unreasonable, arbitrary, or unconscionable attitude" from the court, and it is well within its discretion to deny the late filing.

{¶15} Appellant's second argument is that he, as a pro se litigant, is entitled to leniency in his filings, wording, and arguments to the court. This argument is true, when dealing with pleadings, filings, and similar documents. *Lawler v. Marshall* (C.A.6, 1990), 898 F.2d 1196. That said, however, the "*pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and the adherence to court rules." *Justice v. Lutheran Social Servs. of Cent. Ohio* (Apr. 8, 1993), 10th Dist. No. 92AP-1153; *State of Ohio, Crime Victims Reparations Fund v. Pryor*, 10th Dist. No. 07AP-90, 2007-Ohio-4275. As such, there was no "unreasonable, arbitrary, or unconscionable" attitude from the court, and the court had no choice but to require appellant to comply with the procedural time rules.

{¶16} Furthermore, even if appellant did indeed meet the deadline for the filing of his motion, and he did have extra leniency due to being a pro se litigant, appellant provides no legal argument as to why the court erred in denying his motion for extension of time. As there is no legal argument to how the judge erred, it is not on the appellate court to find an argument for appellant.

{¶17} For these reasons, we conclude that appellant has failed to demonstrate an "unreasonable, arbitrary, or unconscionable attitude" from the trial court, and thus there is no error by the court. Accordingly, we overrule appellant's second assignment of error.

{¶18} By his third assignment of error, appellant alleges that the trial court erred in granting appellee's motion for summary judgment.

{¶19} Appellant basis this argument on an allegation that the trial court granted the motion based on academic immunity. He does not, however, present any facts indicating that there indeed is a question of material fact.

{¶20} The legal standard for appellate review of a motion for summary judgment is a de novo review. *Id.*; *Duncan v. Capitol S. Community Urban Redevelopment Corp.*, 10th Dist. No. 02AP-653, 2003-Ohio-1273. As a de novo review, the court may grant summary judgment when: (1) there is no genuine issue of material fact; (2) the moving party is entitled to a judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, that being adverse to the non-moving party. Civ.R. 56; *Bostic v. Connor* (1988), 37 Ohio St.3d 144; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317. Once the moving party has shown that there are specific absences of material fact, it is the duty of the non-moving party to show that there is a genuine issue for trial. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107; Civ.R. 56(E).

{¶21} In reviewing this appeal de novo, the alleged breach of contract must first be examined. It is well-settled that there is a contract established when a student enrolls, pays tuition, and attends classes at a school. This contract is typically found in a handbook, catalogue, or other guideline. *Smith v. Ohio State Univ.* (1990), 53 Ohio Misc.2d 11, 13; *Elliot v. Univ. of Cincinnati* (1999), 134 Ohio App.3d 203. Furthermore,

when dealing with such a breach, the court is to defer to the decisions of the school unless it can find "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.* (1992), 78 Ohio App.3d 302, 308; quoting *Regents of the Univ. of Mich. v. Ewing* (1985), 474 U.S. 214, 225, 106 S.Ct. 507.

{¶22} Under an examination of the record, proper procedure was followed by appellee in disciplining, and eventually removing appellant. These actions were spelled out in the contract (handbook) given to appellant at the beginning of appellant's enrollment in the school, and do not depart from any accepted academic norms of which we are aware.

{¶23} Furthermore, there was no timely response filed by appellant to the motion for summary judgment, and thus there was no genuine issue for trial shown by the non-moving party. As appellant did not "respond, summary judgment, if appropriate, shall be entered against [him]." Civ.R. 56(E).

{¶24} For these reasons, we conclude that appellant has failed to demonstrate that there is a genuine issue of material fact, that appellee was entitled to summary judgment in an academic matter, and thus there is no error by the trial court. Accordingly, we overrule appellant's third assignment of error.

{¶25} By his fourth and fifth assignments of error, appellant alleges that the trial court erred in declaring appellant's response to the motion for summary judgment moot. He also alleges that the trial court erred in declaring his motions for leave to file a motion for summary judgment and his motion for summary judgment moot.

{¶26} Appellant argues, similar to his second assignment of error, that the trial court should have given him more leniency in the filing of his response to appellee's motion for summary judgment, his motion for leave, and his motion for summary judgment and, as such, the court should not have found his response moot.

{¶27} We have already found that the trial court ruled properly in the second assigned error. As such, the court had no duty to accept appellant's response to appellee's motion. There is no legal argument presented that indicates that the trial court erred in any manner other than what has been already addressed.

{¶28} For these reasons, we conclude that the trial court was correct in finding appellant's response and motions moot. Accordingly, we overrule appellant's fourth and fifth assignments of error.

{¶29} By his sixth assignment of error, appellant alleges that the trial court erred in delaying the entering of the final decision and judgment.

{¶30} Appellant seems to be arguing that, by delaying 45 days before issuing a decision, the trial court should have granted his previously mentioned motions. Furthermore, appellant argues that this delay impeded his ability to appeal the decision. Both of these claims are without merit.

{¶31} As indicated above, the court was not in error when it ruled against appellant's motions. The court considered the motions on November 1, 2010, and issued its decision on December 16, 2010. This delay did not prejudice appellant, nor is it unreasonable to expect a court to have a period of time to write, edit, and research their decision. Furthermore, as his time limit for appeal did not begin to accrue until after the decision was issued, that claim is also without merit.

{¶32} For these reasons, we conclude that the trial court did not err in entering the final decision when it did. Accordingly, we overrule appellant's sixth assignment of error.

{¶33} For the foregoing reasons, the first assignment of error was withdrawn at oral argument, the second, third, fourth, fifth, and sixth assignments of error are overruled. We therefore affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

SADLER and CONNOR, JJ., concur.

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