

IN THE COURT OF CLAIMS OF OHIO

KEISHA MIDDLEBROOK

Plaintiff

v.

THE OHIO STATE UNIVERSITY
WEXNER MEDICAL CENTER

Defendant

Case No. 2025-00569JD

Judge Lisa L. Sadler
Magistrate Robert Van Schoyck

DECISION

{¶1} On May 1, 2026, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff filed a response on May 8, 2026, without a certificate of service as required by Civ.R. 5. On May 13, 2026, plaintiff was ordered to file proof of service at once. Plaintiff filed a certificate of service on June 22, 2026, stating the response and attached exhibits had been served on May 14, 2026. Although Civ.R. 6 required that plaintiff file her response together with a certificate of service within 28 days after service of the motion for summary judgment, the court has nevertheless reviewed the response.

{¶2} Additionally, on June 8, 2026, plaintiff filed records relating to her behavioral healthcare, again without a certificate of service. On June 16, 2026, defendant filed a motion to strike the documents because they “were never served on Defendant and were filed secured, so Defendant is unable to view them from the Court’s online docket.” Plaintiff filed a response on June 23, 2026, again without a certificate of service. Plaintiff was previously notified, in orders issued on July 18, 2025, and May 13, 2026, that under Civ.R. 5 documents filed with the court must be served upon defendant’s counsel and be accompanied by a certificate of service indicating the date and manner of such service. Under Civ.R. 5(B)(4), documents filed with the court “shall not be considered until proof of service is endorsed thereon or separately filed.” Therefore, defendant’s motion to strike is GRANTED and the documents filed by plaintiff on June 8, 2026, shall not be considered.

{¶3} Defendant's motion for summary judgment is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

Standard of Review

{¶4} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C):

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 summary 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.

"[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying these portions of the record before the trial court which demonstrate the absence of a genuine issue of material fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St. 3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶5} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that

there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Background

{¶6} Plaintiff, a former employee of defendant, brings this action alleging that she resigned her position with defendant's Endoscopy Department upon accepting an offer of employment from The Ohio State University College of Dentistry, but the College of Dentistry subsequently withdrew the offer "due to her not completing the six-month probation period" in her role at the Endoscopy Department. (Complaint, ¶ 12.) Plaintiff alleges that "[a]t the time of the job offer and acceptance, HR and management had access to her employment record and should have known of the probation period restriction" and "Defendant's failure to properly communicate and coordinate these internal policies resulted in Plaintiff being left unemployed and suffering severe emotional distress." (*Id.* at ¶ 13-14.)

{¶7} In support of its motion for summary judgment, defendant submitted a transcript of plaintiff's deposition; an affidavit from Lisa Howard, Manager of Central Sterilization and Dispensing at The Ohio State University College of Dentistry; Nikki Lindley, Human Resources Consultant at The Ohio State University College of Dentistry; and, Johnathan Morgan, Nurse Manager of Procedural Services at The Ohio State University Wexner Medical Center. In opposition, plaintiff attached several unauthenticated documents and photographs to her response.

{¶8} Johnathan Morgan avers in his affidavit that plaintiff was hired as a Sterile Supply Technician 2 in the Endoscopy Department of the Wexner Medical Center, and that this role was subject to a probationary period ending on February 14, 2025. (Morgan Affidavit, ¶ 3.) According to Morgan, there were issues with plaintiff's work performance and on December 13, 2024, he counseled her about expectations within the Endoscopy Department, including leaving work for personal appointments without notifying a manager, communication with co-workers, and tardiness. (*Id.* at ¶ 4.) Morgan avers that plaintiff was counseled again on January 9, 2025, and because she "was not showing improvement after the January 9, 2025 meeting", he and another supervisor determined

that plaintiff would not “be a beneficial team member in the Endoscopy Department, and we began processing her probationary termination.” (*Id.* at ¶ 6.)

{¶9} Plaintiff testified in her deposition that by late 2024 she had started looking for a different job because she felt “like it was time for me to move along”, and in approximately December 2024 she applied for a position in the College of Dentistry. (Middlebrook Depo., pp. 53-54.) Lisa Howard avers in her affidavit that she interviewed plaintiff as a candidate for a role as a Dental Assistant in the Sterilization area of the College of Dentistry but states that she “did not make any promises to Ms. Middlebrook about her eligibility for a role within the Dentistry Department”, and that even though she “did recommend her as a candidate to receive a conditional offer of employment after the interview, . . . [she] had no way of knowing or verifying her eligibility for the role.” (Howard Affidavit, ¶ 3-4.)

{¶10} Nikki Lindley, Human Resources Consultant at the College of Dentistry, avers that plaintiff subsequently “did receive a conditional offer of employment as a Dental Assistant within the Sterilization area of Dentistry. The offer included a tentative start date of February 3, 2025.” (Lindley Affidavit, ¶ 3.) Lindley authenticated in her affidavit a copy of the written offer extended to plaintiff, and as Lindley explains:

The conditional offer of employment clearly stated that “This offer of employment is conditioned on your satisfactory completion of certain requirements, as explained in this letter and the attached addendum. Your employment is subject to the terms and conditions set forth in this letter.”

The addendum included the terms that the potential employee is required to successfully complete a post-offer health screening, and is subject to all applicable employment policies of the Ohio State University.

(*Id.* at ¶ 4, Exhibit A.)

{¶11} Plaintiff admitted in her deposition that the offer of employment was subject to certain terms and conditions, as described in the offer letter and addendum. (Middlebrook Depo., p. 69.) Lindley avers, and plaintiff did not dispute in her deposition, that one of the conditions was completing a required employee health screening, which was originally scheduled for January 29, 2025. (*Id.*; Lindley Affidavit, ¶ 5.) Plaintiff testified that she rescheduled the employee health screening to January 31, 2025.

(Middlebrook Depo., p. 75.) Lindley explains that when plaintiff rescheduled the employee health screening, the human resources department of the College of Dentistry received an automated notification, and as a result Lindley “logged into the HR system to verify Ms. Middlebrook’s information, and learned that she was still within her probationary period in a union position [at] The Ohio State University Wexner Medical Center.” (Lindley Affidavit, ¶ 7.) Howard’s affidavit provides that so long as plaintiff was in “a probationary period in a union role”, she was “not eligible to transfer to a new position in the University.” (Howard Affidavit, ¶ 3.) Lindley states that the College of Dentistry human resources department consequently notified plaintiff by email on January 29, 2025, “that she needed to request with her current manager to stay on with her role until the end of her probationary period, and that we would need to move her start date to February 17, 2025, pending the successful completion of her probationary period and her employee health screening.” (Lindley Affidavit, ¶ 7.)

{¶12} As plaintiff explains in her deposition, however, she had previously submitted a letter of resignation to the Endoscopy Department, effective January 31, 2025. (Middlebrook Depo., pp. 70-71.) The Endoscopy Department, which had earlier begun processing plaintiff’s probationary termination due to a lack of improvement in her performance, accepted her resignation and stopped processing the termination, according to Morgan. (Morgan Affidavit, ¶ 6-7.) Plaintiff states in her deposition that on January 31, 2025, she emailed a supervisor in the Endoscopy Department asking to stay on through February 14, 2025, but was told that her resignation had been accepted and her employment would not be extended. (Middlebrook Depo., pp. 89-90.) Additionally, Lindley avers that the College of Dentistry received an automated notification that plaintiff did not appear for the required employee health screening that had been rescheduled at plaintiff’s request to January 31, 2025, and according to Lindley plaintiff never completed the health screening. (Lindley Affidavit, ¶ 8.)

{¶13} Lindley explains that “[b]ecause Ms. Middlebrook failed to complete her probationary period with the Endoscopy Department, and because she failed to successfully complete an employee health screen, the College of Dentistry elected not to continue with Ms. Middlebrook’s candidacy and withdrew its conditional offer of employment.” (*Id.* at ¶ 10.)

{¶14} On June 11, 2025, plaintiff filed her complaint in this matter seeking monetary damages under three theories of relief: Count I—Promissory Estoppel; Count II—Negligent Misrepresentation; and Count III—Negligent Infliction of Emotional Distress. On July 14, 2025, defendant filed a motion to dismiss, in part, as to the negligent infliction of emotional distress claim, which the court granted on August 15, 2025.

Law and Analysis

Promissory Estoppel

{¶15} For her claim of promissory estoppel, plaintiff alleges that “Defendant made a clear and definite promise that Plaintiff would begin her new position on February 3, 2025”, that she “relied on that promise by resigning from her former position”, and that “[a]s a direct result of her reliance, Plaintiff was left without employment and suffered financial and emotional harm.” (Complaint, ¶ 15-17.)

{¶16} “The elements necessary to establish a claim for promissory estoppel are a (1) promise, (2) clear and unambiguous in its terms, (3) reliance that is reasonable and foreseeable, and (4) injury caused by such reliance.” *Patel v. Univ. of Toledo*, 2017-Ohio-7132, ¶ 21 (10th Dist.). “[A]ccording to Ohio law, a promissory estoppel claim cannot be premised on a conditional promise when the condition at issue never occurs.” *Brett v. Time Warner Cable Midwest, LLC*, 2017 U.S. Dist. LEXIS 44341, *14-15 (N.D. Ohio Mar. 24, 2017); see also *Marusa v. Brunswick*, 2005-Ohio-1135, ¶ 40 (9th Dist.) (appellant’s reliance on alleged promise of employment was unreasonable where the offer of employment was conditioned upon appellant successfully completing paramedic training, and appellant failed to do so).

{¶17} Defendant argues that plaintiff cannot demonstrate that the College of Dentistry made a clear and definite promise of employment. Instead, the supporting evidence submitted by defendant demonstrates that the offer of employment was conditioned upon several requirements. Plaintiff admits in her response that she “received a conditional offer” from defendant and admits more specifically in her deposition that the offer of employment was subject to certain terms and conditions as described in the offer letter and addendum. (Response, p. 2; Middlebrook Depo., p. 69.) Lindley, who authenticates a copy of the offer letter and addendum in her affidavit,

explains that successfully completing an employee health screening was one such requirement, and that the offer was subject to all applicable employment policies of defendant. One of defendant's employment policies provided that plaintiff was not eligible to transfer to a new position without completing her probationary employment in the Endoscopy Department, according to the affidavit of Howard. (Howard Affidavit, ¶ 3.) It is undisputed that plaintiff did not complete an employee health screening and that plaintiff did not complete her probationary employment. The evidence submitted by defendant thus demonstrates that plaintiff's offer of employment was conditional, and that plaintiff did not meet all the necessary conditions.

{¶18} Defendant also argues that plaintiff "cannot show that she reasonably relied upon the offer to her detriment, as she was never eligible for the offered position in the College of Dentistry". (Motion, p. 10.) Defendant points to Morgan's affidavit, in which he authenticates the offer letter and addendum for plaintiff's position in the Endoscopy Department, which provides that plaintiff's start date was August 12, 2024, and that this was a bargaining-unit position "subject to a 180-day probationary period." (Morgan Affidavit, Exhibit A.) As previously stated, Howard's affidavit demonstrates that under defendant's policies plaintiff was not eligible to transfer to another position without completing that probationary period. Together, these evidentiary materials demonstrate that, to the extent that the College of Dentistry's offer letter identified a start date of February 3, 2025, plaintiff was not eligible to transfer to the College of Dentistry at that time. Further, defendant argues, consistent with Morgan's affidavit, plaintiff "would not have successfully completed her probationary period with the Endoscopy Department even if she had not submitted her notice of resignation, because she was already in the process of a probationary removal due to her poor performance." (Motion, p. 10.; Morgan Affidavit, ¶ 6-8.)

{¶19} Here, defendant met its burden at the summary judgment stage of coming forward with evidence showing that the terms and conditions of the offer of employment were not met and that plaintiff cannot prove her claim that "Defendant made a clear and definite promise that Plaintiff would begin her new position on February 3, 2025." (Complaint, ¶ 15.) Defendant further demonstrated that plaintiff cannot show that she reasonably relied upon the College of Dentistry's offer letter to her detriment, since she

was ineligible to transfer to the College of Dentistry at the time of her resignation and she would have been removed and not completed her probationary employment even if she had not resigned. In short, the evidence presented by defendant demonstrates that plaintiff cannot prove all the elements necessary to sustain her promissory estoppel claim.

{¶20} “If the moving party has satisfied its initial burden under Civ.R. 56(C), then the non-moving party “has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.”” *Meredith v. ARC Indus.*, 2024-Ohio-4466, ¶ 22 (10th Dist.), quoting *Heimberger v. Zeal Hotel Group Ltd.*, 2015-Ohio-3845, ¶ 14 (10th Dist.), quoting *Dresher*, 75 Ohio St.3d at 293. “Once the moving party meets its initial burden, the nonmoving party must then produce competent evidence showing that there is a genuine issue for trial.” *McDonald v. Abdella*, 2018-Ohio-4125, ¶ 16 (10th Dist.). “The nonmoving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidentiary material that shows a genuine dispute over the material facts exists.” *Roberts v. Treasurer*, 147 Ohio App.3d 403, 410 (10th Dist. 2001).

{¶21} In response to defendant’s properly supported motion for summary judgment, plaintiff does not identify any evidence supporting her claim that defendant “made a clear and definite promise that Plaintiff would begin her new position on February 3, 2025”, nor evidence that she reasonably relied to her detriment on the College of Dentistry’s conditional offer of employment. Plaintiff argues in her response that there are genuine issues of material fact, “including conflicting accounts regarding Plaintiff’s job performance and training, contradictions between Defendant’s affidavits and contemporaneous communications, evidence of internal communication breakdowns between departments, and evidence that Plaintiff reasonably relied on Defendant’s hiring process and communications.” (Response, p. 1.) But plaintiff does not point to any specific evidence at all. Plaintiff attached various documents and photographs to her response, none of which are authenticated by affidavit. “Pursuant to Civ.R. 56(C), “documents submitted in opposition to a motion for summary judgment must be sworn, certified or authenticated by affidavit to be considered by the trial court in determining whether a genuine issue of material fact exists for trial.”” *Gabriel v. Ohio State Univ.*

Med. Ctr., 2015-Ohio-2661, ¶ 23 (10th Dist.), quoting *Riley v. Brimfield*, 2010-Ohio-5181, ¶ 66 (11th Dist.), quoting *Sintic v. Cvelbar*, 1996 Ohio App. LEXIS 3009 (11th Dist. July 5, 1996). Because the materials submitted by plaintiff were not authenticated by affidavit, they may not be considered. See *Silveous v. 5 Starr Salon & Spa, LLC*, 2023-Ohio-841, ¶ 52 (10th Dist.). Even if they had been authenticated, plaintiff does not identify these materials in her response, much less explain their significance.

{¶22} Because defendant met its initial burden under Civ.R. 56 and plaintiff failed to meet her reciprocal burden, defendant is entitled to summary judgment on plaintiff's promissory estoppel claim.

Negligent Misrepresentation

{¶23} For her claim of negligent misrepresentation, plaintiff alleges that "Defendant negligently misrepresented Plaintiff's eligibility to transfer within the organization", that she "relied on these misrepresentations when making employment decisions", and that "Defendant failed to exercise reasonable care in communicating or enforcing internal job transfer policies." (Complaint, ¶ 18-20.)

{¶24} "[A] negligent misrepresentation occurs when one supplies false information for the guidance of others." *Interstate Gas Supply, Inc. v. Callex Corp.*, 2006-Ohio-638, ¶ 90 (10th Dist.), quoting *Manno v. St. Felicitas Elementary School*, 2005-Ohio-3132, ¶ 34 (8th Dist.). "The elements of negligent misrepresentation are: '1) one who, in the course of his or her business, profession or employment, or in any other transaction in which he or she has a pecuniary interest, 2) supplies false information for the guidance of others in their business transactions, 3) is subject to liability for pecuniary loss caused

to them by their justifiable reliance upon the information, 4) if he or she fails to exercise reasonable care or competence in obtaining or communicating the information.” *Patel*, 2017-Ohio-7132, at ¶ 30 (10th Dist.), quoting *Federated Mgt. Co. v. Coopers & Lybrand*, 137 Ohio App.3d 366, 395 (10th Dist. 2000).

{¶25} Defendant argues that plaintiff cannot demonstrate that it made a false representation about her eligibility to transfer positions as she claims. In support, defendant points to the College of Dentistry’s offer letter, which does not state that plaintiff was eligible to transfer to the College of Dentistry before the expiration of her probationary employment in the Endoscopy Department. (Lindley Affidavit, Exhibit A.) Nor can the offer letter be construed, defendant contends, “as a false statement that her probationary period had run and she was eligible to transfer to another job with Ohio State.” (Motion, p. 12.)

{¶26} To the contrary, the offer letter states that “[y]our employment is subject to the terms and conditions set forth in this letter.” (Lindley Affidavit, ¶ 3-4, Exhibit A.) The addendum attached to the offer letter sets forth several terms and conditions, including that the offer was contingent upon defendant’s verification of information required by university policies and was subject to all applicable employment policies of defendant. (*Id.*) As previously discussed, it is uncontested that defendant’s policies did not permit a probationary employee to transfer positions before the expiration of their probationary employment. (Howard Affidavit, ¶ 3.)

{¶27} Defendant thus identified evidence demonstrating that plaintiff cannot prove that it made a false representation about her “eligibility to transfer within the organization” as she claims. (Complaint, ¶ 18.)

{¶28} Defendant also argues that, even if plaintiff had relied on the College of Dentistry’s offer letter as a representation “that her probationary period had run and she was eligible to transfer to another job with Ohio State”, her reliance would not have been justifiable. (Motion, p. 12.) The offer letter from the College of Dentistry does not state that plaintiff’s probationary period had run, nor that she was eligible to transfer to another job. Moreover, defendant points out, plaintiff knew that she was subject to a probationary period, the exact duration of which was identified in the Endoscopy Department’s offer

letter which she signed at the time of her hiring there. (Middlebrook Depo., p. 81; Morgan Affidavit, ¶ 2, Exhibit A.)

{¶29} “Reliance is justified if the representation does not appear unreasonable on its face and if, under the circumstances, there is no apparent reason to doubt the veracity of the representation.” *Trepp, LLC v. Lighthouse Commercial Mtge., Inc.*, 2010-Ohio-1820, ¶ 21 (10th Dist.); *see also Nazareth Deli LLC v. John W. Dawson Ins. Inc.*, 2022-Ohio-3994, ¶ 61 (10th Dist.), quoting *Brown v. Woodmen Acc. & Life Co.*, 84 Ohio App.3d 52, 56 (12th Dist.) (“finding the plaintiffs could not establish the justifiable reliance element of their negligent misrepresentation claim, as they only had to look at the ‘documentation evidencing the insurance coverage . . . to ascertain the amount of coverage provided for’ under their policy”); *Struna v. Ohio Lottery Comm.*, 2004-Ohio-5576, ¶ 15 (10th Dist.) (negligent misrepresentation claim failed where plaintiff was on notice of rules set forth in the Ohio Administrative Code and thus could not reasonably rely on a representation contrary to the rules).

{¶30} Plaintiff argues that defendant “failed to properly coordinate” the transfer, including “[c]hecking when Plaintiff’s probationary period would be ending.” (Response, p. 2.) But defendant has presented evidence demonstrating that, even if plaintiff construed the offer letter from the College of Dentistry as a representation that she would have completed the probationary period and been eligible to transfer positions on February 3, 2025, she only needed to read the offer letter that she signed when joining the Endoscopy Department to determine that she would still be in her probationary period at that time, rendering her ineligible to transfer. (Morgan Affidavit, Exhibit A.) Plaintiff, who testified that she did not want the Endoscopy Department management to know of her intention to transfer to the College of Dentistry, admittedly made no attempt to ascertain when she would be eligible to transfer and instead resigned her employment with the Endoscopy Department, selecting an effective date of January 31, 2025. (Middlebrook Depo., pp. 71, 81-83.)

{¶31} Defendant thus produced evidence demonstrating that plaintiff was on notice of the duration of her probationary period and cannot prove that she justifiably relied upon any alleged false representation as to when it expired.

{¶32} Upon review, defendant met its burden at the summary judgment stage of coming forward with evidence demonstrating that plaintiff cannot establish the elements necessary to sustain her claim of negligent misrepresentation. Because defendant satisfied its initial burden under Civ.R. 56, plaintiff has the reciprocal burden to produce or point to appropriate Civ.R. 56 evidence showing that there is a genuine issue for trial. See *McDonald*, 2018-Ohio-4125, at ¶ 16 (10th Dist.); *Akarah v. Ohio Dept. of Rehab. & Corr.*, 2024-Ohio-4499, ¶ 41 (10th Dist.) (“Civ.R. 56 obligates the parties to identify those portions of the record they believe establish the presence, or absence, of a genuine issue of material fact for trial”). Again, however, plaintiff does not point to any specific evidence supporting her claim that defendant negligently misrepresented her eligibility to transfer positions. Because plaintiff failed to meet her reciprocal burden, summary judgment is appropriate on the claim of negligent misrepresentation. See *Jones v. Carpenter*, 2019-Ohio-619, ¶ 56 (10th Dist.) (summary judgment was appropriately entered on negligent misrepresentation claim where appellant “failed to supply the trial court with evidence of any specific affirmative misrepresentations”).

Conclusion

{¶33} Based on the foregoing, even when construing the evidence most strongly in plaintiff’s favor, plaintiff fails to demonstrate the existence of a genuine issue of material fact for trial. The court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant’s motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

LISA L. SADLER
Judge

[Cite as *Middlebrook v. Ohio State Univ. Wexner Med. Ctr.*, 2026-Ohio-3202.]

KEISHA MIDDLEBROOK

Plaintiff

v.

THE OHIO STATE UNIVERSITY
WEXNER MEDICAL CENTER

Defendant

Case No. 2025-00569JD

Judge Lisa L. Sadler
Magistrate Robert Van Schoyck

JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶34} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment, pertaining to Counts I and II of the complaint. (Count III was dismissed on August 15, 2025.) For the reasons set forth in the decision filed concurrently herewith, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. As a result, defendant's June 16, 2026 motion to strike is GRANTED, 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.

LISA L. SADLER
Judge

Filed July 31, 2026
Sent to S.C. Reporter 8/19/26