

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000783-MR

ELIZABETH H. TRIPLETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 99-CI-000116

UNIVERSITY OF KENTUCKY,
JEFFERSON COMMUNITY COLLEGE;
DR. RICHARD GREEN, Ph.D,
President, University of
Kentucky, Jefferson Community College;
DEBBIE JAMES, Chair,
Allied Health Division;
DR. PAM BESSER, Ph.D, Interim Dean
of Academic Affairs;
SUE THEOBOLD, Nursing School
Coordinator;
PAT FORD, Teaching Team Leader;
and GERALD R. JOHNSON, Chair,
Student Appeals Board

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, COMBS, and HUDDLESTON, Judges.

BUCKINGHAM, JUDGE. Elizabeth H. Triplett appeals from an order of the Jefferson Circuit Court dissolving a temporary injunction enjoining University of Kentucky, Jefferson Community College, ("the College") from terminating her enrollment in the College's nursing program. We affirm.

The College is a community college, and the other appellants are employees of the College. Triplett enrolled in the College's nursing program for the 1998 spring semester. In August 1998, she began Nursing 235/245, a course which included a clinical math portion. At the first class meeting, the students were given a course outline which included the policies concerning course expectations and grading for the course. The course outline stated that a failure to receive a grade of eighty-five percent or higher on the clinical math exam in two attempts would result in the student's not being allowed to complete the clinical rotation for Nursing 235/245 and receiving a failing grade for the course.

Triplett failed both the first and second clinical math exams because she did not score eighty-five percent or better. As a result, she was not eligible to progress to the next level course. She appealed her grade to the College Appeals Board ("the Board"), which considered and denied her appeal. Triplett then filed a complaint in the Jefferson Circuit Court requesting that the College be enjoined from expelling her from the 1998 fall semester, that it be compelled to amend her failing grade for the course, that it be enjoined from preventing her from completing the final two clinical rotations necessary to complete the course, that it be enjoined from denying her right to enroll in and complete the remaining semesters of the nursing program, and that it be enjoined from denying her a degree upon her satisfactory completion of the program.

On January 13, 1999, the trial court entered a temporary restraining order restraining the College from preventing Triplett from enrolling in and attending classes, clinical rotations, and other course work required of a student in the third semester of the nursing program. The College then moved to dissolve the temporary restraining order, and Triplett moved to convert it into a temporary injunction or, alternatively, into a permanent injunction. On July 19, 1998, the trial court entered a temporary injunction enjoining the college from terminating Triplett's enrollment and remanding additional issues to the Board.

Following another hearing by the Board, the College again moved the trial court to dissolve the temporary injunction. On April 2, 1999, the trial court entered an order granting the College's motion and dissolving the temporary injunction. On April 13, 1999, the trial court entered an order stating that the previous order was final and appealable and that there was no just cause for delay in its entry. This appeal by Triplett followed.

On April 14, 1999, the chief judge of this court entered an order staying the effectiveness of the trial court's order of April 2, 1999, which dissolved the temporary injunction, pending a ruling by a three-judge panel on Triplett's underlying motion for interlocutory relief. A panel of this court considered Triplett's motion for interlocutory relief pending appeal and, concluding that Triplett failed to demonstrate a substantial likelihood of success on the merits, denied the

motion. The panel further ordered that the appeal be advanced and submitted to the same panel for a decision on the memoranda and documents already filed.

Triplett contends that the actions of the College in expelling her from the nursing program were arbitrary and capricious and violated her due process rights under Section 2 of the Kentucky Constitution. She further argues that the trial court erred in dissolving the temporary injunction it had entered in her favor on February 19, 1999. The right to injunctive relief is addressed to the sound discretion of the trial court, and this court is without authority to set aside an order granting or denying injunctive relief unless the trial court abused its discretion. Maupin v. Stansbury, Ky., 575 S.W.2d 695, 697-98 (1978). See also Oscar Ewing, Inc. v. Melton, Ky., 309 S.W.2d 760, 762 (1958).

Kentucky Rule of Civil Procedure (CR) 65.04(1) states as follows:

When Authorized. A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

Applications for temporary injunctive relief should be viewed on three levels by the trial court: (1) the trial court should determine whether the plaintiff has shown irreparable injury; (2) the trial court should weigh the various equities involved; and

(3) the complaint should be evaluated to determine whether a substantial question has been presented. Maupin, 575 S.W.2d at 699. The College argues that Triplett did not present a substantial question on the merits, and in light of the course requirements of which Triplett had notice and the due process she was afforded in the appeal of her expulsion, we agree and conclude that the trial court did not abuse its discretion in dissolving the temporary injunction.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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