

STATE OF MICHIGAN
COURT OF APPEALS

MARTHA CARLTON,

Plaintiff-Appellant,

v

THE TRUSTEES OF THE UNIVERSITY OF
DETROIT MERCY, HENRY FORD HOSPITAL,
PAT QUINN, PAT HARPER, KAREN GIERA,
MARY EMMERT, LOU ANN MINORE and
DORIS TANAKA,

Defendants-Appellees.

UNPUBLISHED

April 9, 2002

No. 225926

Wayne Circuit Court

LC No. 99-902328

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiff was enrolled in the Henry Ford Hospital/University of Detroit Mercy Graduate Program in Nurse Anesthesiology. When plaintiff began to receive low evaluation scores from her instructors in her second term, she met with counselors to help her meet the program objectives. Plaintiff continued to have clinical problems during her third term, and some instructors informed the clinical coordinator that plaintiff had a hard time dealing with criticism and tended to be defensive. Near the end of plaintiff's third term, a clinical education committee decided to put plaintiff on probation after meeting and looking at her semester evaluation. During her probation, plaintiff frequently met with the clinical coordinator and clinical instructors to evaluate her progress and formulate plans for improvement. According to the clinical coordinator, plaintiff's clinical evaluations did not improve and she did not meet the program objectives for the term. At the end of the probation period, a clinical education committee met to determine whether plaintiff had met the program objectives and could continue with the program or had not met the program objectives and had to be dismissed from the program. The committee reviewed plaintiff's daily clinical evaluations and determined that, although plaintiff was in her fourth term, she still had not met the third term program objectives. Therefore, the committee unanimously recommended dismissing plaintiff from the program.

The university provided for a due process hearing for those students who thought that they had been unfairly dismissed. Plaintiff exercised her right to this hearing. At the hearing, the parties presented evidence in support of their positions. The due process committee unanimously determined that the university had followed the proper procedure in dismissing plaintiff and upheld the university's decision.

Plaintiff filed a complaint against defendants, alleging breach of contract, tortious interference with a contractual relationship, and intentional infliction of emotional distress. Defendants filed a motion for summary disposition with regard to all of plaintiff's claims. The trial court found that, by giving plaintiff a hearing to challenge her dismissal, the university had given plaintiff more due process than the law required. The trial court stated that its only role in evaluating the university's academic decision to dismiss plaintiff from the program was to determine whether the decision was arbitrary or capricious or was made without material, competent, and substantial evidence in support. The trial court held that, because the university's decision was based on substantial, material, and competent evidence,¹ it could not review the matter further and plaintiff's claims had to be dismissed. The trial court granted defendants' motion and dismissed plaintiff's claims. Plaintiff challenges this decision on appeal.

The record does not make clear on which subrule the court relied in granting defendants' motion. However, the trial court's reasoning suggests that it granted summary disposition under MCR 2.116(C)(10).² A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The trial court must consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the nonmoving party. *Maiden, supra* at 120. The moving party is entitled to a judgment as a matter of law if the proffered evidence fails to establish a genuine issue as to any material fact. *Id.* at 120-121. A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff first argues that the trial court erred in finding that it did not have the authority to review the university's decision. A trial court may review a university's actions only to determine if they are so arbitrary and capricious as to warrant the court's interference in the matter. *Maitland v Wayne State University*, 76 Mich App 631, 636-637; 257 NW2d 195 (1977). In *Maitland*, this Court quoted federal case law discussing the standard of judicial review for university academic decisions:

Where a medical student has been dismissed for a failure to attain a proper standard of scholarship, two questions may be involved; the first is, was the student in fact delinquent in his studies or unfit for the practice of medicine? The

¹ Although the trial court did not explicitly state that the university did not act arbitrarily or capriciously, such a conclusion was implicit in the trial court's findings.

² Indeed, the trial court relied on the due process hearing testimony when making its ruling. If a trial court considers facts not found in the pleadings in granting a motion for summary disposition, the motion should be treated as being granted under MCR 2.116(C)(10). See generally *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988).

second question is, were the school authorities motivated by malice or bad faith in dismissing the student, or did they act arbitrarily or capriciously? In general, the first question is not a matter for judicial review. However, a student dismissal motivated by bad faith, arbitrariness or capriciousness may be actionable. [*Id.* at 636, quoting *Connelly v University of Vermont*, 244 F Supp 156, 159 (D Vt, 1965).]

In *Regents of the University of Michigan v Ewing*, 474 US 214, 223-225; 106 S Ct 507; 88 L Ed 2d 523 (1985), the United States Supreme Court similarly held that a university's academic decision to dismiss a student from a school program is reviewed by the courts to determine whether the university acted arbitrarily. Absent a finding of arbitrariness, the court's review of the university's decision is limited:

When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. [*Id.* at 225 (footnote omitted).]

In the instant case, the trial court essentially found that because the university's decision was not arbitrary and capricious, it had no authority to review the decision any further. This standard applied by the trial court is the standard set forth in *Maitland, supra* at 636-637. Therefore, the trial court applied the correct standard in reviewing the university's decision.

Next, plaintiff argues that a contract existed between her and the university and defendants acted arbitrarily and capriciously in violation of the contract when they decided to dismiss her from the program. Defendants do not dispute that there was at least an implied contract between plaintiff and the university. The United States Supreme Court has held that a student who has been accepted to a university has an implied contractual right to continued enrollment in that university. *Ewing, supra* at 223. This implied contractual right gives the student the right to continued enrollment free from arbitrary dismissal. *Id.*

As discussed, the trial court may review a university's actions only to determine if they are so arbitrary and capricious as to warrant the court's interference in the matter. *Maitland, supra* at 636-637. Defendants presented a great deal of evidence that they followed the policies in the student handbook and that their decision to place plaintiff on probation and dismiss her from the program was based on factors such as plaintiff's clinical ineptitude and her failure to meet the objectives required by the program. Defendants presented evidence that, in placing plaintiff on probation, the clinical education committee held a meeting and looked at plaintiff's semester evaluation. Plaintiff's clinical evaluations were inconsistent, and she would have periodic days where her evaluations were very poor for the whole day. Later, in dismissing her from the program, a clinical education committee met again to review plaintiff's daily clinical evaluations. The committee thoroughly went through all of plaintiff's daily clinical evaluations from the previous six months. The committee determined that plaintiff was now in her fourth term, but still had not met the objectives for the third term.

On appeal, plaintiff points to her own testimony that the decision made by the university to dismiss her from the program was the result of the influence of biased instructors who disliked her. Plaintiff argues that her dismissal was based on inaccurate, skewed information and was not based on any objective standards. Plaintiff also argues that defendants did not follow the procedures set forth in the student handbook in placing plaintiff on probation and in choosing a committee to evaluate plaintiff's progress. We disagree. The evidence presented by defendants shows that defendants substantially followed the university's procedures and exercised their professional judgment in deciding to dismiss plaintiff from the program.

Moreover, defendant gave plaintiff a due process hearing to dispute her dismissal. There is no indication that the due process hearing was conducted unfairly or that the due process hearing committee's decision was arbitrary or capricious. The committee found that Henry Ford and UDM had followed the procedures and policies as outlined by the student handbook when they dismissed plaintiff from the program. The transcript of the hearing shows that the committee members used their professional judgment in conducting the hearing and deciding to uphold the university's decision to dismiss plaintiff from the program.

Under the circumstances, the trial court did not err in granting defendants' motion for summary disposition. In light of this disposition, we need not address plaintiff's remaining issue on appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Patrick M. Meter