STATE OF MICHIGAN

COURT OF APPEALS

LYNN DIEBOLT,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY and JANVER KREHBEIL,

Defendants-Appellees.

UNPUBLISHED
June 4, 2002

No. 227903
Ingham Circuit Court
LC No. 98-088923-NZ

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendants on plaintiff's Persons With Disabilities Civil Rights Act (PWDCRA) claim, MCL 37.1101 *et seq*. The trial court also held that there was no genuine issue regarding whether plaintiff—a student in defendant Michigan State University's doctorate of veterinary medicine program—had claims for tortious interference with a contract/expectation and gross negligence against defendant Krehbeil. We affirm.

I

Plaintiff was granted admission into defendant Michigan State University's college of veterinary medicine (CVM) program in 1995. However, prior to beginning this professional program, plaintiff suffered severe injuries after being struck by a drunk driver. As a result of her injuries, plaintiff claimed that she was neurologically disabled. Defendants granted plaintiff an admission deferral for one year, but refused to grant her a second deferment. After completing three semesters, plaintiff was dismissed from the program in 1997.

We review decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and is only appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[1]

[1] We note that defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (continued…)

Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). After the moving party identifies matters that have no disputed factual issues, it is incumbent upon the non-moving party to present admissible documentary evidence that a material fact exists. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

II

A. Claim Against Individual Defendant

As a threshold matter, defendants contend that plaintiff's PWDCRA claim against defendant Janver Krehbeil, the associate dean of the CVM, as an individual, is improper because these claims lie only against educational institutions. We disagree.

The PWDCRA generally provides:

> (1) The opportunity to obtain employment, housing, . . . full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.
>
> (2) Except as otherwise provided in article 2, a person shall accommodate a person with a disability for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship. [MCL 37.1102.]

Accordingly, "persons" must accommodate the disabled for purposes of education. MCL 37.1102(2). In the general definition portion of the statute, a "person" is defined as "an individual, agent, . . . or any other . . . governmental entity or agency." MCL 37.1103(g). Moreover, while educational institutions are prohibited from discriminating against students, article 4 defines "educational institutions" to include an institution's agent. MCL 37.1401; MCL 37.1402. As an agent of the CVM, defendant Krehbeil is subject to the requirements of the PWDCRA.

(…continued)

(10). The trial court did not specify which subsection of MCR 2.116 it relied upon to grant defendants' motion. However, it appears from the record that the trial court's ruling was based on MCR 2.116(C)(10).

B. Claim Against Michigan State University

A prima facie case of discrimination under the PWDCRA requires proof that plaintiff was disabled within the meaning of the statute, that her disability was unrelated to her ability to benefit from the educational opportunities and programs offered by CVM, and that she was discriminated against in one of the ways described by the statute. *Kerns v Dura Mechanical Components, Inc (On Remand)*, 242 Mich App 1, 12; 618 NW2d 56 (2000); see also MCL 37.1103(d)(i)(C).

Here, the first element of the PWDCRA is satisfied because the parties agree that plaintiff is disabled. However, plaintiff's claim fails because she is unable to establish the second element; specifically, that her disability is "unrelated to the [her] ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution." MCL 37.1103(d)(i)(C), (l)(iii); see also *Kerns*, *supra* at 12. A review of the record reveals that plaintiff has not provided any evidence that she is otherwise qualified for the CVM program. The majority of plaintiff's grades were at the minimum passing or failing levels. Plaintiff has failed to explain how the accommodations she requested would insure her success in future classes. Rather, CVM's student performance committee (SPC) seems correct in its conclusion that plaintiff's "difficulty with multisensory inputs would make it difficult for her to deal with future laboratory and clinical situations." This Court defers to the academic policies and judgments of colleges and universities. See *Crancer v Bd of Regents of University of Michigan*, 156 Mich App 790, 796-797; 402 NW2d 90 (1986); see also *Kaltenberger v Ohio College of Podiatric Medicine*, 162 F3d 432, 436 (CA 6, 1998), citing *Board of Regents of University of Michigan v Ewing*, 474 US 214, 225; 106 S Ct 507; 88 L Ed 2d 523 (1985).

Even if plaintiff were otherwise qualified, there is still no evidence that she was "discriminated against in one of the ways described in the statute." *Kerns*, *supra* at 12. Plaintiff advances two main instances of discrimination: (1) defendants' failure to give her the opportunity to recycle; and (2) their failure to allow her the specific accommodations she requested. See MCL 37.1102, 37.1402(a)-(b), (e). Contrary to plaintiff's contention, a review of the record reveals that the SPC did not make the mandatory recommendation that plaintiff be allowed to recycle.[2] Moreover, plaintiff indicated to defendants that recycling would impose a financial hardship. Thus, recycling was not a protected benefit, service, or opportunity under the PWDCRA. See MCL 37.1402(a)-(b), (e); *Crancer*, *supra* at 796-798.

With regard to the accommodation claim, MCL 37.1102, plaintiff provided no evidence that defendants unreasonably denied her accommodation requests. See *Rourk v Oakwood Hosp Corp*, 458 Mich 25, 36; 580 NW2d 397 (1998). Indeed, plaintiff did not adequately explain how the accommodations would assist her in raising her grade point average or whether defendants even possessed these aids. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (party may not rely on allegations in pleadings to create an issue of fact). Moreover, defendants offered plaintiff legitimate explanations for denying the accommodations and reasonable alternatives. *Crancer*, *supra* at 796-798; *Kaltenberger*, *supra* at 436. "And, although a hunch or intuition may, in reality, be correct, the law requires more if a plaintiff is to avoid

[2] According to the record, recycling refers to the opportunity to repeat a class.

summary disposition." *Fonseca v Michigan State University*, 214 Mich App 28, 31; 542 NW2d 273 (1995).

Plaintiff argues that defendant Krehbeil tortiously interfered with the contract between defendant Michigan State University and plaintiff. We disagree.

Plaintiff must prove that defendant is a third-party stranger to her contract in order to succeed in a tortious interference claim. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287; 393 NW2d 610 (1986). Defendant Krehbeil is not a third-party stranger to plaintiff's contract with defendant Michigan State University (MSU) and the CVM; rather, defendant Krehbeil is MSU's agent. Defendant Krehbeil was the associate dean at the CVM and was acting in this capacity when making decisions that affected plaintiff's participation in that program. "[C]orporate agents are not liable for tortious interference with the corporation's contracts unless they acted solely for their own benefit with no benefit to the corporation." *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). Plaintiff has offered no supportable evidence that Krehbeil interfered with plaintiff's contract with defendant MSU for his sole benefit.

Plaintiff further says that defendant Krehbeil was grossly negligent by failing to inform plaintiff about recycling, not monitoring her progress, and refusing to accommodate her needs pursuant to the PWDCRA. We disagree.

Plaintiff's articulated theory sounds in educational malpractice, which is not a recognized claim in Michigan. *Page v Klein Tools, Inc*, 461 Mich 703, 713; 610 NW2d 900 (2000). Further, as we said above, defendant Krehbeil did not unlawfully fail to inform plaintiff of the SPC's recommendation and her opportunity to "recycle." Moreover, it appears that defendant Krehbeil attempted to monitor plaintiff's academic progress as the SPC recommended. There is no evidence that he unreasonably failed to accommodate plaintiff under the PWDCRA. Thus, no duty was breached that was "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c).

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Jessica R. Cooper