MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles W. Florance,
Appellant-Defendant / Counter-Plaintiff,

v.

Indiana University,
Appellee-Plaintiff / Counter-Defendant.

November 9, 2023

Court of Appeals Case No. 22A-CC-2653

Appeal from the St. Joseph Circuit Court

The Honorable John E. Broden, Judge

Trial Court Cause No. 71C01-1904-CC-1456

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Charles W. Florance ("Florance") appeals, *pro se*, the order granting summary judgment to Indiana University ("the University") on Florance's claim that the University committed breach of contract by modifying its attendance policies. Florance presents the following consolidated and restated issues for our review:

> I. Whether there are genuine issues of material fact precluding summary judgment on the claim of breach of contract; and
>
> II. Whether the trial court erred in dismissing a claim under Trial Rule 12(B)(6) due to the statute of limitations.

[2] Discerning no error in the challenged rulings, we affirm the trial court.

Facts and Procedural History

[3] Florance attended the Indiana University School of Medicine ("IUSM") in the fall of 2016 and withdrew after one semester. The University sued Florance in 2019, alleging he defaulted on student loans. Florance counterclaimed. One counterclaim was that the University committed breach of contract by modifying its attendance policies ahead of Florance's sole semester of classes. Representing himself in the proceedings before the trial court, Florance claimed that he chose IUSM because IUSM representatives "made promises to [him] about" the program, among them, that "lectures are not mandatory; students can learn course material in ways that work best for them." Appellee's App. Vol. II p. 36. Florance alleged that, "[i]n between [his] application and the start of classes, IUSM significantly changed" aspects of the program, including its attendance policies, which had "significant and negative impacts on [him] and

[his] family." *Id.* at 37. He further alleged that he "would not have attended IUSM if [he] had known earlier that [IUSM] would make these changes." *Id.*

[4] The University moved to dismiss Florance's counterclaims, and the trial court held a hearing. The trial court determined that the breach of contract claim was not subject to dismissal, however the court dismissed the remaining claims determining that the claims were either time barred or otherwise procedurally defective. The University then moved for summary judgment. Meanwhile, Florance's loan debt was cancelled. The parties stipulated to dismissal of the University's complaint, agreeing that "[t]he only pending issue remaining" was the motion for summary judgment on Florance's "breach of contract claim." *Id.* at 45.

[5] The University designated evidence that Florance received an offer of admission to IUSM in January 2016. Enclosed was an information sheet providing a link to an online version of the IUSM Student Handbook ("the Handbook"). The information sheet stated that the Handbook was "the official document outlining the policies, procedures, and resources" of IUSM. Appellant's App. Vol. II p. 111. The Handbook contained a Reservation of Rights Clause specifying that IUSM could amend its policies at any time: "While every effort is made to provide accurate and current information, the School of Medicine reserves the right to change without notice policies, procedures, programs, and other matters when circumstances dictate." *Id.* at 73; Appellant's Br. p. 6 (asserting that the linked version of the Handbook "opened with the disclaimer" (citing Appellant's App. Vol. II p. 73)).

[6] In response, Florance designated evidence that, after receiving his offer letter, he arranged an informational call and was told: "You don't have to attend lectures." Appellant's App. Vol. II p. 168. Florance also designated evidence regarding similar statements from other IUSM representatives. He averred that he chose to attend IUSM because of its attendance policy, electing to withdraw his applications to other schools. He further averred that he "first discovered the school made changes to the[] attendance policy on or around August 4, 2016," and "[t]he policies governing attendance got more and more strict in the coming weeks," ultimately leading to "a punishment . . . that would be part of a student's permanent record and . . . negatively impact" the student. *Id.* at 169.

[7] At the hearing on summary judgment, Florance argued that the University made an enforceable promise to maintain a relaxed attendance policy for his benefit whereas the University argued it was "within [its] power" to change policies. Tr. Vol. II p. 43. The trial court granted the University's motion for summary judgment. In its written order, the trial court referred to caselaw on implied contracts and at one point stated that "not[h]ing in the designated evidence would suggest bad faith on [the University's] part or any conduct that could be construed as arbitrary or capricious." Appellant's App. Vol. II p. 21. The court acknowledged that "there is definitely evidence in the record that[,] prior to August of 2016, [IUSM] had a different attendance policy than the one that was employed . . . [regarding] the 2016-2017 academic year, Florance's first year." *Id.* The trial court also acknowledged that Florance had "presented evidence that the attendance policy in effect prior to his enrollment was a

significant factor in his decision to choose IUSM for his medical studies." *Id.* The court ultimately concluded that the University was entitled to summary judgment because "nowhere in the designated evidence is there any handbook or other similar document that would bind" the University and prevent it "from making changes to this attendance policy." *Id.* Florance now appeals.

Discussion and Decision

I. Summary Judgment

[8] "We review the trial court's summary judgment decision de novo." *Z.D. v. Cmty. Health Network, Inc.*, 217 N.E.3d 527, 531 (Ind. 2023). A party is entitled to summary judgment "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). "A genuine issue of material fact exists when there is 'contrary evidence showing differing accounts of the truth,' or when 'conflicting reasonable inferences' may be drawn from the parties' consistent accounts and resolution of that conflict will affect the outcome of a claim." *Z.D.*, 217 N.E.3d at 532 (quoting *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 789 (Ind. 2021)). "In viewing the matter through the same lens as the trial court, we construe all designated evidence and reasonable inferences therefrom in favor of the non-moving party." *Ryan v. TCI Architects/Eng'rs/Contractors, Inc.*, 72 N.E.3d 908, 912 (Ind. 2017).

[9] "The party appealing the trial court's summary judgment determination bears the burden of persuading us the ruling was erroneous." *Id.* at 913. However,

"we carefully scrutinize that determination to ensure that a party was not improperly prevented from having its day in court." *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905, 908 (Ind. 2001). Where—as here—the party appealing the ruling is self-represented, the party "is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014).

[10] As this court observed in *Neel v. I.U. Bd. of Trustees*: "Courts have analyzed the nature of the student-university relationship under many different legal doctrines." 435 N.E.2d 607, 610 (Ind. Ct. App. 1982) (collecting cases from sister courts). "The most pervasive and enduring theory is that the relationship between a student and an educational institution is contractual in nature." *Id.*

[11] "Legal questions, such as contract interpretation, are well-suited for summary judgment." *Ryan*, 72 N.E.3d at 913. Moreover, "[w]hether a contract exists is a question of law." *Conwell v. Gray Loon Outdoor Mktg. Grp., Inc.*, 906 N.E.2d 805, 813 (Ind. 2009). "The basic requirements for a contract are offer, acceptance, consideration, and a meeting of the minds of the contracting parties." *Id.* at 812–13. "To be valid and enforceable, a contract must be reasonably definite and certain," but "[a]bsolute certainty in all terms is not required." *Id.* at 813. Rather, there "must be mutual assent or a meeting of the minds" as to "all essential elements or terms[.]" *Carr v. Hoosier Photo Supplies, Inc.*, 441 N.E.2d 450, 455 (Ind. 1982) (quoting 17 Am. Jur. 2d Contracts § 18 (1964)). When it comes to assent, "the manifestation of a party's intention, rather than the actual or real intention, is ordinarily controlling[.]" *Id.*; *see State*

v. Koorsen, 181 N.E.3d 327, 335 (Ind. Ct. App. 2021) ("[T]he relevant intent is not the parties' subjective intentions but the outward manifestations thereof."), *trans denied*. In other words, the "intent to be bound is measured objectively, by the parties' words and conduct, not their subjective state of mind." *Block v. Magura*, 949 N.E.2d 1261, 1267 n.2 (Ind. Ct. App. 2011); *see also* Restatement (Second) of Contracts § 2(1) (Am. L. Inst. 2023) ("A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.").

[12] "There are three general types of contracts—express, implied-in-fact, and constructive contracts." *Zoeller v. E. Chicago Second Century, Inc.*, 904 N.E.2d 213, 220 (Ind. 2009). Whereas "[e]xpress and implied-in-fact contracts are traditional contracts," constructive contracts—also called quasi-contracts—"are not contracts at all." *Id.* at 220–21. When the parties manifest their intent to enter into a contract through their "spoken or written words," the parties form an express contract. *DiMizio v. Romo*, 756 N.E.2d 1018, 1024 (Ind. Ct. App. 2001), *trans. denied*. In contrast, when the parties manifest this contractual intent through their "acts and conduct," they instead form an implied contract. *Johnson v. Scandia Assocs., Inc.*, 717 N.E.2d 24, 31 n.11 (Ind. 1999) (quoting *McCart v. Chief Exec. Officer in Charge, Indep. Fed. Credit Union*, 652 N.E.2d 80, 85 (Ind. Ct. App. 1995), *trans. denied*). "An implied contract is equally as binding as an express contract." *Trustees of Ind. Univ. v. Spiegel*, 186 N.E.3d 1151, 1158 (Ind. Ct. App. 2022) (quoting *In re Paternity of P.W.J.*, 846 N.E.2d 752, 760 (Ind. Ct. App. 2006)), *trans. denied.*; *cf.* Restatement (Second) of Contracts § 4 cmt. (a)

(Am. L. Inst. 2023) (noting that, although "[c]ontracts are often spoken of as express or implied," the distinction generally "involves . . . no difference in legal effect, but lies merely in the mode of manifesting assent").

[13] The terms of a contract between a student and an educational institution "are rarely delineated[.]" *Neel*, 435 N.E.2d at 610. However, "[i]t is generally well accepted that the catalogues, bulletins, circulars, and regulations of a university made available to the matriculant become [a] part of the contract." *Amaya v. Brater*, 981 N.E.2d 1235, 1240 (Ind. Ct. App. 2013) (citing *Ross v. Creighton Univ.*, 957 F.2d 410, 416 (7th Cir. 1992) (identifying consensus across several jurisdictions)), *trans. denied*. Moreover, when the university has made other statements to the matriculant—such as statements in "marketing materials, handbooks, . . . and syllabi"—those statements could amount to enforceable promises. *See Spiegel*, 186 N.E.3d at 1159 (determining a claim of breach of contract was adequately pleaded based on alleged promises in these materials).

[14] Florance argues that IUSM's pre-enrollment statements about its attendance policy amounted to a promise that the policy would never change. Yet, the designated evidence indicates Florance was told that the Handbook was "the official document outlining the policies, procedures, and resources" of IUSM, and it contained a Reservation of Rights Clause. Appellant's App. Vol. II at 111. Florance argues that, despite the Reservation of Rights Clause, IUSM promised to apply the existing attendance policy during his time at IUSM. Put differently, he contends that when IUSM representatives told him about the existing policy, the University assented to maintain that policy for his benefit.

[15] On summary judgment, it is appropriate to consider whether a statement amounted to an enforceable promise. *See, e.g.*, *Wolvos v. Meyer*, 668 N.E.2d 671, 675 (Ind. 1996) (affirming the partial grant of summary judgment, "examin[ing] whether the parties intended to be bound" by certain language and determining, as a matter of law, that the parties had formed a contract); *Z.D.*, 217 N.E.3d at 532 (noting summary judgment generally turns on whether the designated evidence supports conflicting reasonable inferences); *cf.* 17B C.J.S. Contracts § 1012 (2023) ("Questions of fact are generally presented by the issue [of] whether the parties to an alleged contract intended to enter into an agreement . . . *provided the question does not become one of law on certain or undisputed facts*." (footnotes omitted) (emphasis added)).

[16] Under the circumstances at hand—where IUSM directed Florance to the Handbook for its official policies, and the Handbook contained the Reservation of Rights clause—we conclude that the designated evidence does not show that the University intended to be bound by ancillary statements about the attendance policy in effect when Florance enrolled. *See generally, e.g.*, *Block*, 949 N.E.2d at 1267 n.2 ("[I]ntent to be bound is measured objectively, by the parties' words and conduct, not their subjective state of mind."); *cf.* 17 C.J.S. Contracts § 79 (2023) (noting that, for a party's statement to be contractual in nature, "[t]he statement must import a willingness to be bound"). In short, the designated evidence does not support a reasonable inference that, by making

accurate statements about the existing policy, the University intended to override the Reservation of Rights Clause and promise a nonstandard policy.[1]

II. Dismissal of Other Claims

[17] In addition to alleging breach of contract, Florance claimed that the University violated the Americans with Disabilities Act ("ADA") by failing to provide reasonable accommodations in 2016. The University moved to dismiss this counterclaim under Trial Rule 12(B)(6), alleging Florance filed the claim outside the applicable statute of limitations. The trial court dismissed the claim.

[18] Under Trial Rule 12(B)(6), a party may move to dismiss a claim for "[f]ailure to state a claim upon which relief can be granted[.]" This type of motion "tests the legal sufficiency of the . . . claim, not the facts supporting it." *Payne-Elliott v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 193 N.E.3d 1009, 1013 (Ind. 2022). Dismissal is proper under Trial Rule 12(B)(6) only if "it appears to a certainty on the face of the complaint that the complaining party is not entitled to any relief." *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind.

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[1] Florance argues the trial court erred by looking for "designated evidence [that] would suggest bad faith on [the University's] part or any conduct that could be construed as arbitrary or capricious." Appellant's App. Vol. II p. 21. He argues this evidentiary standard does not apply. *Compare, e.g.*, *Amaya v. Brater*, 981 N.E.2d 1235, 1241 (Ind. Ct. App. 2013) ("[B]efore a court will intervene into the implied contractual relationship between [a] student and [a] university, there must be some evidence that the university acted arbitrarily or in bad faith."), *trans. denied with Trustees of Ind. Univ. v. Spiegel*, 186 N.E.3d 1151, 1159 n.4 (Ind. Ct. App. 2022) (suggesting this evidentiary standard might not apply in "cases involving the provision of goods and services in an academic setting"), *trans. denied*. Having resolved summary judgment on the stated grounds, we decline to address this aspect of the trial court's order. *See Rice v. Strunk*, 670 N.E.2d 1280, 1283 (Ind. 1996) ("In the summary judgment context, we are not bound by the trial court's specific findings of fact and conclusions of law. They merely aid our review by providing us with a statement of reasons for the trial court's actions.").

2017) (quoting *State v. Am. Fam. Voices, Inc.*, 898 N.E.2d 293, 296 (Ind. 2008)). We review de novo whether dismissal was proper under this rule. *Id.* In reviewing the adequacy of the pleaded claim, we must follow Trial Rule 8(F), which states: "All pleadings shall be so construed as to do substantial justice, lead to disposition on the merits, and avoid litigation of procedural points." Consistent with this rule, "we take the alleged facts to be true and consider the allegations in the light most favorable to the nonmoving party, drawing every reasonable inference in that party's favor." *Bellwether*, 87 N.E.3d at 466.

[19] Whenever a complaint "shows on its face that the statute of limitations has run," a party may seek dismissal under Trial Rule 12(B)(6). *Nichols v. Amax Coal Co.*, 490 N.E.2d 754, 755 (Ind. 1986). However, if "the complaint states facts indicating the [claimant] may prevail on a claim notwithstanding the statute of limitations," the claim is not subject to dismissal at the pleading stage. *State v. Alvarez ex rel. Alvarez*, 150 N.E.3d 206, 216 (Ind. Ct. App. 2020).

[20] On appeal, Florance does not dispute that a two-year statute of limitations applied to the ADA claim, and that he first brought the claim on May 31, 2019, outside the applicable statute of limitations. Rather, he argues that, due to the doctrine of equitable estoppel, the ADA claim should not have been dismissed. The University asserts that Florance failed to plead facts supporting a claim of equitable estoppel, so the ADA claim was subject to dismissal.

[21] "Indiana law allows for tolling a period of limitations under the doctrine of equitable estoppel." *Kenworth of Indianapolis, Inc. v. Seventy-Seven Ltd.*, 134

N.E.3d 370, 383 (Ind. 2019). "In general, equitable estoppel prevents a party from asserting rights where doing so would work a fraud or injustice on another party." 31 C.J.S. Estoppel & Waiver § 74 (Aug. 2023). "Equitable estoppel is typically linked to claims of fraudulent concealment[.]" *Kenworth*, 134 N.E.3d at 383. However, the doctrine of equitable estoppel "also applies to other conduct that 'lull[s] [a party] into inaction." *Id.* (quoting *Paramo v. Edwards*, 563 N.E.2d 595, 599 (Ind. 1990) (alterations in original)); *cf. Williams v. Sims*, 390 F.3d 958, 960 (7th Cir. 2004) (noting that several sister courts have applied this doctrine and tolled the statute of limitations "where the defendant requested the plaintiff to delay suit while the parties tried to negotiate a settlement").

[22] Florance argues that the doctrine of equitable estoppel applied because the University asked him to postpone filing a lawsuit until Florance's debt was cancelled. Florance also claims that the University agreed not to file a collections suit against him. He contends that he filed the "untimely ADA claim" immediately after it became "clear the University intended to renege on their agreement and pursue their collection[s] suit[.]" Appellant's Br. p. 29.

[23] Florance's pleading does not contain specific allegations about the University's request to delay litigation or any agreement to refrain from a collections suit. *Cf.* Appellant's Reply p. 13 ("Florance's pleadings are admittedly unspecific on the release of performance and its connection to the timeliness of his counterclaim."). Florance argues his pleading is nevertheless adequate because of the following two statements therein: (1) "I performed all duties under the [loan] contract and the [associated] Promissory Note, except for those that were

prevented or excused by [the University]"; and (2) "I was released from performance by [the University.]" *Id.* at 28 (citing Appellant's App. Vol. II p. 23). The University responds that these allegations are insufficient to avoid application of the statute of limitations, so the claim was facially deficient and subject to dismissal. In his Reply Brief, Florance argues in the alternative he should be excused from pleading facts in avoidance because he provided details bearing on equitable estoppel when he defended the motion to dismiss, namely, through the briefing and argument Florance presented to the trial court.

[24] "[T]he rules of notice pleading do not require that the complaint recite in detail all the facts upon which the claim is based[.]" *Obremski v. Henderson*, 497 N.E.2d 909, 910 (Ind. 1986). At the same time, the complaint must set forth factual allegations that, if taken as true, show the claimant is entitled to relief. *See* T.R. 8(A) ("[A] pleading must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief"). Here, the allegations Florance relies upon—and the reasonable inferences that could be drawn from those allegations—do not indicate that equitable grounds existed to avoid the statute of limitations. *See Alvarez*, 150 N.E.3d at 216 (noting a claim is subject to dismissal if the pleading (1) states facts indicating the claim was filed outside the statute of limitations and (2) fails to state "facts indicating the [claimant] may prevail on a claim notwithstanding the statute of limitations"). Moreover, we are unpersuaded Florance is excused from Indiana's pleading requirements because of his more detailed briefing and argument defending the motion to

dismiss. Thus, because the pleading was factually deficient regarding a theory of equitable estoppel, the trial court did not err in dismissing the counterclaim.

Conclusion

[25] The trial court did not err in granting the University summary judgment on the claim of breach of contract, or in dismissing the ADA-related counterclaim.

[26] Affirmed.

Altice, C.J., and May, J., concur.