

STATE OF MICHIGAN
COURT OF APPEALS

KRISTINA PIKUNAS,

Plaintiff-Appellant,

v

UNIVERSITY OF DETROIT MERCY,

Defendant-Appellee.

UNPUBLISHED

September 20, 2002

No. 232882

Wayne Circuit Court

LC No. 99-936640-CZ

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1993 plaintiff was admitted to defendant's doctoral program in clinical psychology. This program is composed of several parts, one of which is a 2000-hour clinical internship. A student must obtain written approval from the program director prior to beginning an internship. The director must sign an Association of Psychology Post-Doctoral and Internship Centers (APPIC) form attesting to the student's eligibility and readiness for an internship.

During the fall of 1996 the program director, Dr. Stack, refused to sign plaintiff's APPIC form based on concerns about plaintiff's maturity and resulting ability to commence the internship process. Dr. Stack and the associate director, Dr. Abell, advised plaintiff that they had received complaints regarding her explosive behavior, and that she would be required to undergo an evaluation to determine her emotional readiness to undertake an internship.

Drs. Stack and Abell specified that the professional could be of plaintiff's own choosing but could not be a member of the faculty or a person with whom plaintiff had worked. Plaintiff's initial letter of reference and evaluation were rejected because they were authored by a psychologist with whom plaintiff had worked. A subsequent evaluation was accepted, and Dr. Stack signed plaintiff's APPIC form. Plaintiff commenced an internship in 1998 and completed it in 1999.

In December 1999 plaintiff filed an amended complaint alleging breach of legitimate expectation that defendant would follow established policies regarding rectification of problems,

breach of contract resulting from university policies, estoppel, violation of constitutional rights of due process and free speech, violation of the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, as a result of defendant acting on unfounded perception of a disability, i.e., emotional unreadiness, and damages consisting of loss of two years' wages and pain and suffering.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's claims must fail because its actions were a legitimate exercise of academic judgment with which a court should not interfere absent evidence of arbitrary and capricious behavior. It argued no evidence established that its actions delayed plaintiff's graduation. Defendant asserted plaintiff failed to state a claim under the PWDCRA because even assuming that Dr. Stack's perception of plaintiff as immature and emotionally unprepared for an internship constituted the perception of a disability, that disability was directly related to plaintiff's ability to successfully complete an internship. Further, plaintiff could not establish a claim of estoppel because she could not show that she relied to her detriment on any false statement by defendant. Finally, plaintiff's claim that her constitutional rights were violated must fail because it was not a public institution. The trial court found defendant's arguments persuasive and granted the motion.

This Court reviews a trial court's decision on a motion for summary disposition on a *de novo* basis. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

Initially, plaintiff argues the trial court erred in granting defendant's motion for summary disposition of her claims of breach of legitimate expectation and breach of contract. We disagree. The relationship between a private university and a student confers duties upon both parties. Those duties may not be arbitrarily disregarded. However, courts are extremely reluctant to interfere with an academic decision, and will override a faculty decision only if the decision is such a departure from accepted norms that it demonstrates the decisionmaker did not exercise professional judgment but instead acted in an arbitrary manner. *Regents of the University of Michigan v Ewing*, 474 US 214, 225; 106 S Ct 507; 88 L Ed 2d 523 (1985); *DeMarco v University of Health Sciences*, 40 Ill App 3d 474; 352 NE2d 356, 361-362 (1976).

The evidence established that Dr. Stack, a board-certified clinical psychologist, based her concerns about plaintiff's emotional readiness to undertake an internship that would place her in direct, unsupervised contact with patients on several incidents in which plaintiff engaged in angry, emotional outbursts. Plaintiff's assertion that Dr. Stack's decision to require her to obtain a psychological evaluation was politically motivated is unsubstantiated. The trial court correctly concluded that Dr. Stack's decision was an exercise of academic judgment with which the court should not interfere. *Ewing, supra*; *DeMarco, supra*.

Next, plaintiff argues the trial court erred by dismissing her claim that defendant's conduct violated the PWDCRA. We disagree. In order to establish a *prima facie* case of discrimination under the PWDCRA, a plaintiff must allege that: (1) she is disabled as defined in the act; (2) the disability is unrelated to her ability to perform the duties of a particular job; and (3) she has been discriminated against in one of the ways set forth in the act. *Merillat v Michigan State University*, 207 Mich App 240, 244; 523 NW2d 802 (1994). A disability includes a determinable physical or mental characteristic which results from disease, injury, congenital condition, or functional disorder, if the characteristic substantially limits one or more

major life activities and is unrelated to the individual's ability to perform the duties of a particular job. A disability also includes being perceived as having such a characteristic. MCL 37.1103(d).

Dr. Stack required plaintiff to obtain a psychological evaluation because she was concerned that plaintiff was immature and not emotionally ready to undertake an internship. Plaintiff cites no authority to support her assertion that immaturity is a disability as that term is defined by the PWDCRA. However, even assuming *arguendo* that Dr. Stack perceived plaintiff as being disabled, the nature of the condition, i.e., being emotionally immature, was clearly related to plaintiff's ability to interact in a direct and unsupervised way with patients who were in need of psychological treatment. Plaintiff failed to state a claim for violation of the PWDCRA. *Merillat, supra*. The trial court properly granted summary disposition.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly