STATE OF MICHIGAN

COURT OF APPEALS

JULIE LEMSON,

Plaintiff-Appellant,

V

MICHIGAN STATE UNIVERSITY and JANVER KREHBEIL,

Defendants-Appellees.

UNPUBLISHED
November 1, 2002

No. 232227
Ingham Circuit Court
LC No. 99-090119-NZ

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants under MCR 2.116(C)(10) with respect to plaintiff's claims of disability discrimination under the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq*., tortious interference with a contract or expectancy relationship, and gross negligence. We affirm.

Plaintiff was accepted into defendant Michigan State University's college of veterinary medicine (CVM) program in 1994. She suffers from a major depressive disorder, and was placed on academic probation following her first semester. In May 1996, plaintiff was dismissed from the program because of poor academic performance.

The trial court's ruling on a motion for summary disposition granted under MCR 2.116(C)(10), which tests the factual support of a plaintiff's claim, is reviewed de novo. *DeBrow v Century 21 Great Lakes, Inc (After Remand),* 463 Mich 534, 537; 620 NW2d 836 (2001).

With regard to plaintiff's disability claim under the PWDCRA, the trial court ruled that there was no genuine issue of any material fact that plaintiff was offered an equal educational opportunity, and that defendants granted plaintiff's accommodation request. Under the PWDCRA, a person with a disability shall be accommodated for purposes of education unless the accommodation would impose an undue hardship. MCL 37.1102(2). Here, plaintiff was

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

diagnosed with depression shortly after she began her studies at the CVM, and she told two of her professors about her diagnosis. She was advised to tell defendant Krehbeil, the assistant dean of the CVM, which she did. At the end of her third semester, plaintiff requested that her examinations be postponed because her dog had become critically ill and the stress of the situation affected her ability to take the examinations. Plaintiff's request was granted. To the extent that plaintiff also contends that Krehbeil should have informed her that the university would assist disabled students and should have offered particular accommodations to her, there is no additional obligation under the PWDCRA for defendant to determine which accommodations might be necessary to assist plaintiff's particular needs. *Lindberg v Livonia Public Schools*, 219 Mich App 364, 368; 556 NW2d 509 (1996). Therefore, the trial court correctly ruled that plaintiff was not denied an accommodation for purposes of education.

Plaintiff also contends that she was denied an equal educational opportunity to "recycle" her classes when non-disabled veterinary students were allowed to do so. "Recycling" refers to allowing a student to repeat a class, semester, or year of courses when the student performs inadequately. Recycling is not a student right, but is a privilege granted by the student performance committee in its discretion to students who show academic promise. After her first semester, plaintiff had a grade point average of 1.91, and she was placed on academic probation. After completing four semesters, plaintiff's cumulative grade point average was 1.807. The student performance committee voted to dismiss plaintiff, but left Krehbeil with the option to allow plaintiff to recycle if there was evidence available to justify another semester. In May 1996, Krehbeil met with the CVM's chief academic officer, and they decided to dismiss plaintiff from the program.

Here, there is no evidence that plaintiff was qualified for the educational opportunity sought, that being recycling, because the student performance committee did not recommend that plaintiff be allowed to recycle. See *Crancer v Bd of Regents of Univ of Michigan*, 156 Mich App 790, 795; 402 NW2d 90 (1986). Indeed, Krehbeil indicated that plaintiff was not allowed to recycle because this option was reserved for students who had shown academic promise and had temporary problems. Plaintiff never had a cumulative grade point average above 2.0 and clearly exhibited problems with stress. Therefore, in this case, recycling was not a protected benefit, service, or opportunity under the PWDCRA. See MCL 37.1402(a)-(b), (e); *Crancer*, *supra* at 796-798. Rather, it is apparent that plaintiff was dismissed from the CVM because of poor academic performance and there is no evidence that she was dismissed because of her disability.

Accordingly, the trial court did not err in granting summary disposition in favor of defendants with respect to the disability discrimination claim.

Next, plaintiff argues that Krehbeil tortiously interfered with the contract she had with defendant Michigan State University. The trial court ruled that Krehbeil was not a third-party to the contract because he was acting for the benefit of the university. To maintain a cause of action for tortious interference with a contract, plaintiff must show that defendant caused the breach of contract and that defendant was a third-party to the contract. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287; 393 NW2d 610 (1986). Krehbeil is not a third-party to plaintiff's contract with the university and the CVM; rather, Krehbeil is the university's agent because he 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 evidence that Krehbeil interfered with plaintiff's contract with the university for his sole benefit. Therefore, the trial court did not err in so ruling.

Lastly, plaintiff argues that Krehbeil was grossly negligent by failing to inform her about recycling, not monitoring her progress, and refusing to accommodate her needs pursuant to the PWDCRA. 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 stated, Krehbeil did not unlawfully fail to inform plaintiff about the privilege of recycling or fail to offer accommodations for her disability 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/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof