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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2028**

Siobhan Nash-Marshall,
Appellant,

vs.

The University of Saint Thomas, et al.,
Respondents.

**Filed August 12, 2008
Affirmed
Harten, Judge***

Ramsey County District Court
File No. 62-C4-07-003278

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HARTEN, Judge

Appellant Siobhan Nash-Marshall challenges the dismissal of her breach of contract claim against respondent University of St. Thomas (UST). Because her claim does not set forth a legally sufficient claim for relief, we affirm.

FACTS

In August 2000, appellant was hired as an assistant professor in the UST philosophy department. After a probationary period, she was transferred to a tenure-track position. Her pursuit of tenure was governed by the relevant sections in UST’s Faculty Handbook (the handbook):

III. Tenure . . .

. . . .

B. Criteria for Tenure.

During the sixth year, the Annual Reports of the previous five years and the success in meeting the goals defined in them re the basis for the tenure recommendation that is made by the Departmental Tenure Committee, the department chair/program director, the dean(s) and the Academic Council.

The following criteria apply to persons who are applying for tenure or for tenure and promotion simultaneously.

1. Graduate Training.

. . . .

2. Professional Development.

. . . .

a. Teaching.

.....

b. Engaging the Profession.

.....

c. University, Professional, and
Community Service.

.....

C. Procedures for Tenure.

1. Application Form and Dates.

.....

Timetable.

.....

January 16 to February 28.

Members of the Academic Counsel have access to the candidate's portfolio during this period. . . . After due consideration of the application of the candidates for tenure (and promotion if applicable) the Academic Council will make a recommendation to the President of the university for his consideration. *The President makes the final tenure and promotion decision after considering this advice.*

.....

6. Recommendation of the Academic Council.

The recommendation of the Academic Council is forwarded by the executive vice president/chief academic officer to *the president, who makes the final disposition.*

(Emphasis added.)

Appellant applied for tenure in 2005. By March 2006, the academic council had recommended that she not be granted tenure, and UST's president, acting on that recommendation, denied her application. Appellant requested reconsideration. In April 2006, following a hearing, the academic council reversed its decision and recommended tenure. In May 2006, UST's president again denied appellant's application.

Appellant filed a grievance. In January 2007, after a hearing, the grievance committee recommended reconsideration of appellant's tenure application. In February 2007, UST's president again denied appellant's tenure application.

Appellant brought this action against UST and its president, claiming breach of contract and of the covenant of good faith in employment. UST and its president moved to dismiss. The parties agreed to dismiss the claim of breach of covenant of good faith in employment, because it does not exist as a cause of action in Minnesota, and to dismiss UST's president as a party to the action.

The district court granted UST's motion to dismiss appellant's complaint for failure to state a claim on which relief can be granted and dismissed appellant's complaint with prejudice. She challenges the dismissal.

DECISION

In reviewing cases dismissed for failure to state a claim on which relief can be granted, the only question before the reviewing court is whether the complaint sets forth a legally sufficient claim for relief. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997).

Appellant argues first that the handbook is a unilateral contract, that she accepted and performed its terms, and that she has a legally sufficient claim for breach because

UST failed to grant her tenure. But appellant misreads the handbook. It sets out the procedure by which those who accept and perform certain criteria will be considered for tenure, and it explicitly (and repeatedly) reserves the final decision on tenure to UST's president. It does not say that all those who accept and perform the criteria for tenure will be granted tenure.

Appellant also misreads the handbook to argue that the president must grant tenure to those who meet the criteria and must follow the recommendation of the academic council. The handbook does not impose these limitations on the president; it clearly provides that the president "makes the final tenure and promotion decision" and "makes the final disposition" in tenure matters.

Appellant relies on *Ganguli v. University of Minnesota*, 512 N.W.2d 918, 922-23 (Minn. App. 1994) (reversing decision to deny tenure because review panel decided applicant's complaint without a hearing or findings) to argue that Minnesota law supports granting her tenure. But *Ganguli* is distinguishable. In that case, the operative university regulations provided: "The University may not act contrary to the recommendation of the academic unit which made the initial recommendation except for substantive reasons which must be stated in writing by the Vice President." *Id.* at 922. The UST handbook does not impose a similar restriction on its president. *Ganguli* does not support appellant's argument.¹

¹ Appellant also argues that the district court erred in considering only three provisions instead of the entire handbook, which is included in the appendix to her brief; respondent contends that appellant may not place the entire handbook before this court because it was not before the district court, but does not move to strike it under Minn. R. Civ. App.

Because appellant failed to state a claim on which relief can be granted, we conclude that the district court properly dismissed appellant's complaint with prejudice.

Affirmed.

P. 110.01 (record on appeal consists only of papers filed in the trial court, exhibits, and transcript, if any). Because our review is restricted to whether appellant's complaint stated a legally sufficient claim for relief, *see Barton*, 558 N.W.2d at 749, we do not address the evidentiary argument.