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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1231**

Bryan Michael Clem, et al.,
Appellants,

vs.

St. Mary's University of Minnesota,
Respondent.

**Filed March 9, 2010
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CV-09-2192

Philip G. Villaume, Jeffrey D. Schiek, Villaume & Schiek, P.A., Bloomington,
Minnesota (for appellants)

Gary J. Gordon, Cheryl Hood Langel, McCollum, Crowley, Moschet & Miller, Ltd.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellants claim that the district court erred by awarding summary judgment to respondent in appellants' breach-of-educational-contract lawsuit. Because appellants failed to present sufficient evidence of a specific promise, which is necessary to sustain a breach-of-educational-contract claim, we affirm.

FACTS

In the fall of 2001, appellants Bryan Clem and George Tessmer were accepted into the Master of Arts in Instruction (MAI) program at respondent St. Mary's University of Minnesota. The MAI program is designed for students who did not obtain an undergraduate degree in education, but nonetheless want to pursue a teaching career. Clem and Tessmer sought to be certified as math teachers in the MAI program.

Prior to admission, St. Mary's provided Clem and Tessmer with transcript reviews detailing additional prerequisite courses that each of them needed to complete before being recommended for licensure. Among other prerequisites not at issue here, Clem needed to complete the following five math courses: Modern Geometry, Mathematical Statistics, Operations Research, Abstract Algebra, and Introduction to Analysis. Tessmer needed to complete the following four courses: Math Foundations II, Operations Research, Abstract Algebra, and Introduction to Analysis. Clem and Tessmer enrolled in the MAI program knowing that they each needed to complete the identified prerequisite courses and that St. Mary's did not currently offer any of the courses at its Twin Cities campus.

According to Clem and Tessmer, after they enrolled in the program, the MAI program director promised them that St. Mary's would provide "all classes required for teacher certification." The purported promise occurred during a meeting on December 8, 2001, at the program director's office. Tessmer sent a letter to the program director the next day, articulating what he believed had been promised during the meeting. The letter stated: "Recall that if we could not get these classes from another institution, you were one of a number of personnel at [St. Mary's] that told us that 'all classes required for teacher certification would be provided at [St. Mary's]'" and that "You, however, assured me not to worry because St. Mary's will provide all the classes that we need for certification at the Twin Cities Campus." On January 7, 2002, the program director e-mailed Tessmer regarding the classes. She stated: "I talked to the dean, and she is eager to hire someone to offer those classes here on this campus. I am submitting a proposal to the dean today to request offering those classes. Hopefully I will have an answer before you start class for 525." St. Mary's subsequently did not offer the classes at its Twin Cities campus.

Because the necessary prerequisite courses were not offered at its Twin Cities campus, St. Mary's agreed to consider Clem's and Tessmer's life experiences in lieu of the courses. On March 24, 2002, Tessmer sent another letter to the program director articulating his understanding of St. Mary's agreement to consider Clem's and Tessmer's life experiences in lieu of the prerequisite courses.

Clem submitted a written description of the life experiences that he considered equivalent to the content of his five uncompleted prerequisite math courses. St. Mary's

determined that Clem's life experiences failed to satisfy the prerequisite course requirements. Thereafter, St. Mary's provided Clem with three options: (1) obtain letters from previous employers documenting his professional experience in reference to the content of the courses; (2) take the final exams in each of the five courses to prove his mastery of the content; or (3) take the five courses. Clem did not pursue any of the options. Instead, he applied to the State of Minnesota for a teaching license, which was denied, in part, due to St. Mary's refusal to provide him with a degree or recommendation for licensure based on Clem's failure to satisfy the prerequisites.

Tessmer was not provided with a degree or a recommendation for licensure based on his failure to complete one semester of student teaching, which was a prerequisite of the MAI program. The headmaster at the school where Tessmer student taught outlined over three dozen "issues and concerns" that he had with Tessmer's student teaching. Tessmer met with the headmaster to address those concerns, but ultimately "resigned" from his student-teaching position.

In February 2008, Clem and Tessmer filed a complaint in district court alleging that St. Mary's had breached an educational contract. St. Mary's moved for summary judgment. The district court awarded summary judgment in favor of St. Mary's, concluding that Clem and Tessmer's claims "involve[d] an inquiry into the nuances of the educational processes and theories," which is impermissible. This appeal follows.

DECISION

"On an appeal from summary judgment, [an appellate court] ask[s] two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district]

court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). “[An appellate court] review[s] de novo whether a genuine issue of material fact exists” and “whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). “A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). “On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Id.*

[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.

DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). “[T]he party resisting summary judgment must do more than rest on mere averments.” *Id.*

A student may bring an action against an educational institution for breach of contract if the institution failed to perform on “specific promises” it made to the student and the claim would not involve an inquiry into the nuances of educational processes and theories. *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 473 (Minn. App. 1999). Clem and Tessmer allege that St. Mary’s breached three specific promises: (1) a promise to provide all math classes required for institutional recommendation for licensure; (2) a

promise to accept Clem's and Tessmer's life experiences in satisfaction of the MAI prerequisite course requirements; and (3) a promise to provide Clem and Tessmer with an institutional recommendation for licensure within four semesters. We address each alleged promise in turn.

I.

Clem and Tessmer argue that St. Mary's promised to provide them with all math classes required to complete the MAI program and to be recommended for licensure. The district court concluded that "it is undisputed that St. Mary's provided all MAI courses at the Twin Cities campus," and that "[t]he courses that Clem failed to complete and which were not offered at the Twin Cities campus were not MAI courses. They were courses that had to be completed 'in addition to [his] MAI coursework' before he would be eligible for a degree and recommendation for licensure." Clem and Tessmer argue, however, that St. Mary's promised to provide them with *all* classes required for license recommendation, not only those that comprised the MAI program.

To support their assertion that this promise was made, Clem and Tessmer refer to Tessmer's letter to the director of the MAI program, which states: "Recall that if we could not get these classes from another institution, you were one of a number of personnel at SMU-TC that told us that 'all classes required for teacher certification would be provided at SMU-TC.'" They also point to an e-mail in which the MAI program director wrote: "I talked to the dean, and she is eager to hire someone to offer those classes here on this campus. I am submitting a proposal to the dean today to request offering those classes. Hopefully I will have an answer before you start class for 525."

Viewing the evidence in the light most favorable to Clem and Tessmer, summary judgment was appropriate. A breach-of-educational-contract claim can only survive if the institution failed to perform on a *specific* promise that it made to the student. *Id.* As evidenced by the preadmission transcript reviews in this case, uncompleted prerequisite course requirements vary from student to student. For example, Clem and Tessmer’s outstanding prerequisite course requirements were not identical. Moreover, the actual course requirements were subject to change depending on whether St. Mary’s accepted either student’s proffered life experiences in lieu of the uncompleted prerequisite courses. We also note that the purported promise does not identify the specific courses that would be offered and that the program director indicated that she would “request” that the courses be offered. In order to defeat St. Mary’s motion for summary judgment, Clem and Tessmer were required to present sufficient evidence of a specific promise. *See Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998) (summary judgment is appropriate when the nonmoving party bears the burden of proof and fails to establish the existence of an essential element of its case). They failed to do so.¹ Because there was no genuine issue of material fact regarding the existence of a specific promise to provide the necessary prerequisite courses, summary judgment was appropriate.

¹ Clem and Tessmer complain that the district court erroneously interpreted “all classes required for teacher certification” as referring to all MAI classes instead of all prerequisite courses. The district court’s interpretation reflects the ambiguous, nonspecific nature of the alleged promise.

II.

Clem and Tessmer next argue that St. Mary's promised to accept their life experiences in lieu of the prerequisite courses. St. Mary's evaluated Clem's life experiences and determined that they did not fulfill the prerequisite course requirements. Tessmer did not provide St. Mary's with a description of his life experiences for consideration in lieu of his uncompleted prerequisite courses.

Clem and Tessmer appear to contend that St. Mary's promised to accept whatever life experiences they submitted as adequate to fulfill the prerequisite course requirements. The record contains no evidence of such a promise. Rather, St. Mary's agreed that Clem and Tessmer could submit life experiences for *consideration* in lieu of the additional math courses. There was no promise that St. Mary's would automatically accept the proffered life experiences as an adequate substitute for the prerequisite courses. Because there was no genuine issue of material fact regarding the existence of a specific promise to accept Clem and Tessmer's life experiences as a substitute for prerequisite courses, summary judgment was appropriate.

Furthermore, St. Mary's decision not to accept Clem's life experiences as a substitute for satisfactory completion of the prerequisite courses was not subject to judicial review: courts will not review "on public policy grounds, claims for educational malpractice; claims that would require the court to engage in a comprehensive review of a myriad of educational and pedagogical factors, as well as administrative policies." *Alsides*, 592 N.W.2d at 473 (quotation omitted). A challenge to St. Mary's conclusion that Clem's life experiences were insufficient involves an inquiry into the nuances of

educational process and theory. A review of this conclusion is beyond the scrutiny of the courts. *See id.* (establishing a cause of action for breach of an educational contract as long as there are no “inquir[ies] into the nuances of educational processes and theories” (quotation omitted)).

III.

Lastly, Clem and Tessmer assert that St. Mary’s promised that they would be granted an institutional recommendation for licensure as teachers within four semesters. According to Clem and Tessmer, this promise was conveyed in the MAI brochure, which stated that students would be ready for licensure at the end of their fourth semester. The district court stated:

This is specifically the type of claim that Courts will not consider, because it involves an inquiry into the nuances of the educational processes and theories. To consider this claim, the Court would have to “second guess” St. Mary’s decisions with regard to the prerequisites that St. Mary’s had for successful completion of the MAI program; whether specific life experiences should be considered equivalent to the content of courses not taken; whether a student “successfully” completed his student teaching assignment. In short, it would require this Court to “second guess” St. Mary’s decision that [Clem and Tessmer] failed to meet the prerequisites for a degree and, therefore, would not be recommended for licensure.

The record contains no evidence that St. Mary’s unconditionally promised that Clem and Tessmer would be recommended for licensure even if they did not satisfy all program requirements. In fact, the MAI brochure states: “Completion of the Master of Arts in Instruction program does not guarantee licensure. The MAI is a standards-based program. All standards and requirements must be satisfactorily completed prior to

recommendation to the state of Minnesota for licensure.” And judicial review of St. Mary’s decision not to recommend Clem and Tessmer for licensure would require an inquiry into the nuances of educational process and theory, which is not permitted. *See id.* (stating judicial review is not permitted if it would require an inquiry into the nuances of educational processes and theory). Because there was no genuine issue of material fact regarding the existence of a specific promise to unconditionally recommend licensure in four semesters, summary judgment was appropriate.

Affirmed.

Dated:

Judge Michelle A. Larkin