[Cite as *Bayt v. Kent State Univ.*, 2008-Ohio-2634.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

STEVEN BAYT

Plaintiff

v.

KENT STATE UNIVERSITY

Defendant

Case No. 2007-02491-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Steven Bayt, was enrolled as a student at defendant, Kent State University ("KSU") Stark Campus, for the summer semester of 2005. Plaintiff stated he received financial aid to assist with the cost of tuition while enrolled at KSU. Plaintiff also stated that during the course of the 2005 summer semester he met several times with a Financial Aid Officer at the KSU Stark Campus and "made several schedule changes and withdrawals based entirely on the advice of a financial aid officer." Plaintiff observed he relied solely on the advice of the KSU Financial Aid Officer in changing his class schedule for the 2005 summer semester. Plaintiff related he "could not have understood the effect of complex schedule changes based on manuals, website and other mass communications that did not have any applications for his situation" so he relied solely on advice from defendant's Financial Aid Office. Plaintiff recalled that during the 2005 summer semester he reviewed his account balance "about twelve times" and the balance "always read $0.00." Plaintiff pointed out the account balance was frequently checked to ensure "he would not owe a Title IV return of funds that students are required under Federal Law to return if they don't complete 60% of their classes." Essentially plaintiff seemed to be conducting these frequent checks to discover if the class changes made in the course of the 2005 summer semester had any effect on the status of his financial aid funds and his own financial responsibility. Additionally, plaintiff asserted a KSU Financial Aid Officer identified as "M" had been

advising him throughout the semester that all the schedule changes he had made "would not lead to a return of funds." Plaintiff explained he officially withdrew from his remaining two classes on August 8, 2005, and received an "Exit Interview." Plaintiff claimed both he and KSU Financial Aid Officer M signed or initialed a document memorializing the "Exit Interview." According to plaintiff, the "Exit Interview" document served as written notice of his intent to withdraw from all remaining classes and confirmation that he would not owe a return of any percentage of financial aid. Plaintiff asserted financial aid officer M told him he would not be obligated to return any financial aid percentage. Plaintiff did not produce the "Exit Interview" document. Plaintiff noted, "[a]fter the financial aid officer signed her initials, plaintiff signatured the exit interview legally withdrawing from classes confirming orally that plaintiff would owe nothing before leaving campus."

{¶2} After plaintiff had withdrawn from all summer classes at KSU, defendant mailed him a letter, on or about August 15, 2005, informing him that he was being charged $946.00 for withdrawing from classes. Plaintiff asserted he should have been informed about being charged for withdrawing from classes at the time he formally withdrew. Seemingly, plaintiff asserted defendant had a duty to notify him immediately by his online account of the financial consequences he would face for voluntarily ending his student enrollment. Plaintiff alleged defendant's acts constituted "gross negligence in advice and (breach of a) fiduciary duty by failing to give him prior notification of the financial aid effects of his schedule changes." Plaintiff contended the acts of the KSU Financial Aid Office amount to negligence or breach of contract. Plaintiff stated, "if given proper advice, plaintiff would have continued with the remaining 6 class meetings for which he withdrew upon full reliance of defendant." Plaintiff denied he was made aware of any financial consequence of his act in withdrawing from all classes. Defendant, in turn, has initiated collection procedures to recover the $946.00 debt from plaintiff. Plaintiff has contended the collection action along with defendant's acts have caused him "a great deal of emotional pain and suffering." Plaintiff filed this complaint

seeking to recover $2,500.00 in damages for emotional distress allegedly caused by defendant's acts in regard to his student obligation dating from the summer of 2005. The filing fee was paid.

{¶3} Plaintiff contended defendant made a clerical mistake when recording he was not eligible for financial aid to pay for the classes he attended and consequently, that he was personally responsible for the tuition. Plaintiff maintained a student must complete at least 60% of the classes in which they are enrolled to escape personal responsibility for the payment of tuition. Furthermore, plaintiff asserted exit interviews are conducted for the sole purpose of calculating tuition payments due from a student. Plaintiff believed he achieved the 60% threshold for classes completed during the 2005 summer semester and therefore, he should not have been personally charged for tuition due. Plaintiff suggested defendant either erroneously recorded the percentage of classes he completed or erroneously calculated the percentage and recorded the wrong percentage based on the erroneous calculation. Plaintiff argued that as a proximate cause of this alleged recording error he suffered compensable damages in the form of mental anguish.

{¶4} Defendant denied any liability in this matter based on the contention that plaintiff failed to produce any evidence that any acts by KSU personnel constituted negligence or breach of contract. Furthermore, defendant asserted plaintiff failed to offer any evidence he suffered any emotional injury resulting from the events he described. Defendant maintained all KSU personnel acted properly in accordance with the federal law in administering plaintiff's financial aid account during the summer semester of 2005. Defendant related, "[t]he financial aid contract under which the Plaintiff was made eligible to receive financial aid specifically authorized the Defendant to refund monies due the Department of Education." Defendant produced a copy of a promissory note plaintiff signed when applying for and subsequently receiving a Federal Direct Subsidized Loan. The note contained the following authorizing language from the borrower: "I authorize my school to pay the U.S. Department of Education (ED) any

refund that may be due up to the full amount of my loan." Defendant explained that when plaintiff withdrew from all classes on August 8, 2005, it was noted on the KSU "Exit Application" form he would not be eligible for any refund of financial aid. Furthermore, on August 15, 2005, defendant sent plaintiff a letter advising him that under guidelines set by the U.S. Department of Education, he was obligated to return $946.00 of the subsidized loan amount due to his early withdrawal from classes at KSU. Defendant denied any KSU personnel made any statements to plaintiff excusing him from his debt obligation. Defendant denied any KSU personnel acted improperly in administering federal financial aid funds in connection with plaintiff's enrollment during the 2005 summer semester.

{¶5} Plaintiff filed a response acknowledging defendant owes an obligation to the U.S. Department of Education to pursue the return of funds from students who completely withdraw from classes. However, plaintiff argued he personally became obligated to return funds upon withdrawal from classes as a proximate result of "gross negligence" on the part of defendant, specifically the KSU Financial Aid officer he referred to as "M." Plaintiff essentially contended that Financial Aid officer "M" had a duty to advise him to attend more classes before withdrawing in order to avoid the $946.00 fund return sought by defendant. Plaintiff also contended defendant improperly calculated the percentage amount of his financial aid subject to return. Although the issue of errors in calculation of amounts subject to return may constitute a defense in a collection action, plaintiff insisted the present claim against defendant is solely based on the emotional distress he stated he suffered as a proximate cause of not receiving adequate advice from the KSU Financial Aid Department. Plaintiff related if he had been told by any KSU Financial Aid officer at the August 8, 2005 Exit Interview that he would owe money for withdrawing from classes, he would have attended more classes and would not have withdrawn at that time.

{¶6} In an additional response, plaintiff pointed out that defendant had a

statutory duty under 20 U.S.C. 1092(b)[1], "to inform students of what repayments will be required" at the time the student withdraws from classes. Plaintiff contended defendant failed to comply with the statutory requirements of 20 U.S.C. 1092(b) and this failure along with the action of the KSU Bursar's Office in pursuing collection efforts constitute negligence which according to plaintiff caused the emotional distress damages claimed. For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, citing *Menifee v. Ohio Welding*

---

[1] 20 U.S.C. 1092(b) provides:

"(b) Exit counseling for borrowers.

"(1)(A) Each eligible institution shall, through financial aid officers or otherwise, make available counseling to borrowers of loans which are made, insured, or guaranteed under part B [*20 USCS* §§ *1071* et seq.] (other than loans made pursuant to section 428B [*USCS* § *1078-2*]) of this title or made under part D or E of this *title* [*20 USCS* §§ *1087a* et seq. or *1087aa* et seq.] prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include–

"(i) the average anticipated monthly repayments, a review of the repayment options available, and such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness; and

"(ii) the terms and conditions under which the student may obtain partial cancellation or defer repayment of the principal and interest pursuant to sections 428(b), 464(c)(2), and 465 [*20 USCS* §§ *1078(b)*, *1087dd(c)(2), 1087ee*].

"(B) In the case of the borrower who leaves an institution without the prior knowledge of the institution, the institution shall attempt to provide the information described in subparagraph (A) to the student in writing.

"(2)(A) Each eligible institution shall require that the borrower of a loan made under part B, D, or E [*20 USCS* §§ *1071* et seq., *1087a* et seq., or *1087aa* et seq.] submit to the institution, during the exit interview required by this subsection–

"(i) the borrower's expected permanent address after leaving the institution (regardless of the reason for leaving);

"(ii) the name and address of the borrower's expected employer after leaving the institution;

"(iii) the address of the borrower's next of kin; and

"(iv) any corrections in the institution's records relating the borrower's name, address, social security number, references, and driver's license number.

"(B) The institution shall, within 60 days after the interview, forward any corrected or completed information received from the borrower to the guaranty agency indicated on the borrower's student aid records.

"(C) Nothing in this subsection shall be construed to prohibit an institution of higher education from utilizing electronic means to provide personalized exit counseling."

Products, Inc. (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered injury and that this injury was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed. Evidence in the instant claims shows defendant had a statutory duty to make available to plaintiff certain counseling regarding repayment of the guaranteed subsidized loan he had obtained. It is unclear whether any conversation occurred between plaintiff and defendant's Financial Aid Office regarding any requests for counseling or a declination of the offer of counseling. Evidence is inconclusive to the fact of whether or not debt counseling was offered.

{¶7} Assuming the acts of defendant's Financial Aid Office and the subsequent act of the KSU Bursar's Office in instituting collection procedures did amount to actionable conduct, plaintiff has failed to prove he actually suffered emotional distress damages caused by these acts. The Ohio Supreme Court has established recoveries of damages for negligent infliction of emotional distress in the absence of contemporaneous physical injury can be determined under certain facts. *Schulz v. Barberton Glass Co.* (1983), 4 Ohio St. 3d 131, 4 OBR 376, 447 N.E. 2d 109. In order to claim negligent infliction of emotional distress, a plaintiff must have "either witnessed or experienced a dangerous accident or appreciated the actual physical peril." *Heiner v. Moretuzzo*, 73 Ohio St. 3d 80, 86-87, 1995-Ohio-65, 652 N.E. 2d 664. In the instant claim, plaintiff alleges the failure of defendant's Financial Aid Office to inform him about the return of funds caused him serious emotional distress. Additionally, plaintiff alleges

the subsequent conduct of defendant's Bursar's Office in setting in motion collection procedures against him also caused serious emotional distress. Recovery for negligent infliction of emotional distress in the absence of contemporaneous physical injury is limited to such instances where a plaintiff was either a bystander to an accident or was in fear of physical consequences and suffered proven severe emotional distress. *Paugh v. Hanks* (1983), 6 Ohio St. 3d 72, 6 OBR 114, 451 N.E. 2d 759; *Dobran v. Franciscan Med. Ctr.*, 102 Ohio St. 3d 54, 2004-Ohio-1883, 806 N.E. 2d 537. Moreover, "Ohio courts do not recognize a separate tort for negligent infliction of emotional distress in the employment context." *Hanley v. Riverside Methodist Hosp.* (1991), 78 Ohio App. 3d 73, 83, 603 N.E. 2d 1126, citing *Hatlestad v. Consol. Rail Corp.* (1991), 75 Ohio App. 3d 84, 598 N.E. 2d 1302. Accordingly, this court shall not recognize plaintiff's claim for negligent infliction of emotional distress arising from the student-educational institution relationship.

{¶8} Concomitantly, the court determines plaintiff has failed to establish elements to prove defendant's acts constituted an intentional infliction of emotional distress.

{¶9} "To establish a claim for intentional infliction of emotion distress, a plaintiff must show (1) that the actor either intended to cause emotional distress or knew or should have known that the actions taken would result in serious emotional distress to the plaintiff; (2) that the actor's conduct was so extreme and outrageous as to go 'beyond all possible bounds of decency' and was such that it could be considered as 'utterly intolerable in a civilized community'; (3) that the actor's actions were the proximate cause of plaintiff's psychological injury; and (4) that the mental anguish suffered by the plaintiff was serious and of a nature that 'no reasonable man could be expected to endure it.'" *Buckman-Peirson v. Brannon*, 159 Ohio App. 3d 12, P29, 2004-Ohio-6074, 822 N.E. 2d 830, citations omitted. Plaintiff, in the instant action, has failed to prove any of the necessary elements to recover on a claim for the intentional infliction of emotional distress. Consequently, plaintiff's claim is denied. Furthermore, all

pending motions are denied.

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

STEVEN BAYT

Plaintiff

v.

KENT STATE UNIVERSITY

Defendant

Case No. 2007-02491-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Steven Bayt
2814 Dellwood Drive
Parma, Ohio 44134-4208

James R. Watson
Assistant Attorney General
Office of University Counsel
Kent State University
Executive Offices Library

Kent, Ohio 44242

RDK/laa
2/27
Filed 3/26/08
Sent to S.C. reporter 5/30/08