

CASE NO.: A10-2041

MINNESOTA COURT OF APPEALS

Linda Zinter,)
)
Plaintiff-Appellant)
)
v.)
)
University of Minnesota and)
Robert H. Bruininks)
)
Defendants-Respondents)

APPELLANT'S REPLY BRIEF

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Table of Contents

I. Professor Johnson’s Intent is Not Relevant to Plaintiff’s Breach of Contract Claims.1

II. Plaintiff Has Never Claimed She Could Take “Any Courses” That Add Up to Thirty Credits.3

III. Plaintiff Was Not Required to File a Formal Academic Grievance4

IV. The Decision in *Mitchell v. Steffen* Supports Plaintiff’s Position5

V. The Court Has the Authority to Remove From Plaintiff’s Record the Two Courses She Was Forced to Take in Excess of the Published Degree Requirements.6

Conclusion7

Table of Authorities

Cases

Cecil v. Bellevue Hospital Medical School, 14 N.Y.S. 4903

Shuffer v. Board of Trustee, 136 Cal Rptr. 5273

Mitchell v. Stevens, 487 N.W.2d 896 (Minn. Ct. App. 1992)5

University of Texas v. Than, 901 S.W.2d 9267

Rules:

Rule 56.05, MinnR.Civ.Pro.4

I. Professor Johnson's Intent is Not Relevant to Plaintiff's Breach of Contract Claims.

Defendants argue that "two undisputed facts tell the story of the case."¹

The first is that plaintiff needed to obtain the approval of her academic advisor for the "course program and for a Final Project." Plaintiff takes no issue with this statement. As required, Ms. Zinter sought and obtained department approval for every course she took in the MLS program.² That was one of the degree requirements and Plaintiff at all times followed that requirement.

The second purported undisputed fact is that "Zinter's advisor's academic judgment was that Zinter needed to take two particular classes to have an adequate course program to prepare her Final Project."³ This assertion, however, is far from "undisputed." Professor Johnson has provided no affidavit in this case explaining or justifying his decision and motivation. Plaintiff has had no opportunity to take his deposition. In support of its assertion that Johnson was motivated only by sound academic judgment, Defendants cite to paragraph 12 of plaintiff's initial complaint.⁴ That paragraph, however, alleges only that Professor Johnson

¹ Respondents' Brief at 6.

² Appellant's Appendix at 12, par. 13.

³ Respondents' Brief at 6.

⁴ Respondents' Brief at 5, note 23.

“*informed* Plaintiff that her idea for her Final Project was not developed”⁵

The paragraph says nothing about the Professor’s actual state of mind and motivation. Plaintiff does allege elsewhere, however, that Professor Johnson’s decision was in bad faith.⁶

Further, even if it was undisputed that Professor Johnson acted in good faith and was motivated only by his sound academic judgment, such intent is no defense. Plaintiff submits that one undisputed fact “tells the story of the case” – that the University required Ms. Zinter to take classes above and beyond the published degree requirements. The contract between the school and its students precludes the school from imposing additional degree requirements on students in good standing, period. It matters not whether the person imposing the additional requirements reasonably believed that he or she was exercising sound academic judgment.

What is most alarming about the University’s position is that it has no boundaries. If the University has the power to impose six additional credits on plaintiff, it necessarily follows that it has the authority to impose ten or twenty

⁵ Appellant’s Appendix at 3 (emphasis added). Of course, at that time Plaintiff was not seeking to enroll in the final project seminar. Plaintiff’s Appendix at 13, par. 17.

⁶ Appellant’s Appendix at 15, Par 29.

additional credits. Such a position should “never receive the sanction of a court in which even the semblance of justice was attempted to be administered.”⁷

II. Plaintiff Has Never Claimed She Could Take “Any Courses” That Add Up to Thirty Credits.

The University suggests this case simply involves a dispute regarding *which* classes plaintiff should take. “Zinter’s claims directly challenge the academic judgment of Zinter’s advisor with regard to what coursework should be approved and what coursework Zinter needed to complete to successfully prepare for her Final Project.”⁸ They further contend that “[t]he fallacy of Zinter’s claims ... is the suggestion that the MLS program ... is purely a numbers game – take any courses that add up to 30 credits and write a project and you are done.”⁹

This is a red herring. Plaintiff has never claimed that she should be allowed to “take any courses that add up to 30 credits.” There are a number of specific published MLS degree requirements in addition to the 30-credit requirement.¹⁰

⁷ *Cecil v. Bellevue Hospital Medical School*, 14 N.Y.S. 490, 490 (Sup.Ct. General Term, 1st Dept, 1891). In that case, a student in good standing was prevented from presenting himself for the final examination. Hence he could not obtain the medical degree he sought. Defendants ignore this decision as well as the other case cited by Appellant directly on point – *Shuffer v. Board of Trustee of the California State University and Colleges*, 136 Cal. Rptr. 527 (Cal. App. 1977).

⁸ Respondents’ Brief at 8.

⁹ *Id.* at 9.

¹⁰ The complete degree requirements are outlined in par. 7 of Plaintiff’s Complaint. Appellant’s Appendix at 2. They includes, among other things, that the student take LS 8001 and LS 8002, take at least 15 elective credits from at least two graduate school departments, and take at least three liberal studies seminars totaling at least nine credits. *See also* Respondents’ Appendix at 29.

Plaintiff met all those degree requirements (apart from the final project seminar). Plaintiff simply contends that the University cannot impose extra degree requirements in its “academic judgment.” In other words, the published degree requirements bind not just the student but also the school.

III. Plaintiff Was Not Required to File a Formal Academic Grievance.

This is not an issue raised in this appeal but defendants address it and thus plaintiff will briefly respond. Defendants contend that it is undisputed that “Zinter did not file an academic grievance challenging her advisor’s direction before enrolling in [the additional] courses.”¹¹ In support, they cite to paragraph 5 of the affidavit of George Green, found at page 67 of their appendix. That paragraph, however, states that “Karen Starry and Professor John Budd, chair of the Grievance Committee in 2003-2004, have recently informed me that they received no emails and recall no contact with Ms. Zinter.” This is inadmissible hearsay in violation of Rule 56.05, MinnR.Civ.Pro., which provides that “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.”

Further, on its face the “Student Academic Grievance” policy has no application here. The policy states that “[a]cademic grievances must be based on a claimed violation of a University rule, policy, or established practice.” But the

¹¹ Respondents’ Brief at 5.

University concedes in this case that it is University policy and practice that academic advisors have discretion to impose additional degree requirements on students in good standing. *See, e.g.*, Appellant's Addendum at 20 (it was Professor Johnson's "duty" to impose additional degree requirements on Ms. Zinter). Thus, any academic grievance filed by Ms. Zinter would have been viewed as a challenge to that policy itself and necessarily rejected.

IV. The Decision in *Mitchell v. Steffen* Supports Plaintiff's Position

With respect to the due process claims, the University argues as follows: 1) Plaintiff is seeking the return of the money she paid for tuition, along with costs and other expenses, and 2) because Plaintiff seeks a monetary recovery, it necessarily follows that her claim is for money damages and not equitable relief.

The decision of this court in *Mitchell v. Stevens*, 487 N.W.2d 896 (Minn. Ct. App. 1992), far from supporting the University's position, directly refutes it. This Court ruled that the plaintiffs in that case were entitled to receive the money they would have received from the state but for an unconstitutional statute. Thus, monetary relief was available in connection with constitutional claims where the requested relief was equitable in nature. Defendants do not seriously dispute that a claim alleging unjust enrichment is equitable in nature.¹²

The University further asserts that it did not wrongly retain any benefit because, after all, Ms. Zinter was allowed to take the classes that she paid for and

¹² *See* Plaintiff's initial brief at 16-17.

she received credit and grades for those courses.¹³ This argument misses the point. The benefit that Plaintiff sought was a diploma. She was precluded from obtaining the degree because of Defendants' wrongful action. Ms. Zinter thus did waste her time and her money. At a minimum the University should give her back what she paid.

With respect to the two classes she was forced to take in excess of the degree requirements, plaintiff's argument for a refund of tuition is even more compelling. For those two classes, the University obtained plaintiff's money as a direct and proximate result of its wrongful actions.

V. The Court Has the Authority to Remove From Plaintiff's Record the Two Courses She Was Forced to Take in Excess of the Degree Requirements.

Plaintiff is not asking the court to second guess the University's grading decisions in the two courses she was forced to take. She is not asking that the "F" or C+ be changed to higher grades. She is not claiming that the quality of the work she completed in those two classes warranted a better grade. In that situation, the court would be forced to review a true academic decision. For obvious reasons that is not the proper role of the courts.

Ms. Zinter is simply asking that the court put her in the position she would have been in "but for" the University's wrongful conduct. The University obviously can do this if the court so orders.

¹³ Respondents' Brief at 12-13.

There is precedent for such action. *See, e.g., University of Texas Medical School v. Than*, 901 S.W.2d 926 ((Tex. 1995). Defendants attempt to distinguish *Than* by arguing that case involved a disciplinary matter while this case involves “academic deficiencies.” But the facts in this case, viewed in the light most favorable to plaintiff, have the appearance of a disciplinary action.

Further, assume hypothetically that Ms. Zinter was forced to take (in excess of the published degree requirements) a physics or math course for which she had none of the prerequisites and was “way over her head” from the beginning. In that situation, the unfairness of not removing the record of the class from her transcript is perhaps more glaring, but the underlying principle is the same.¹⁴

CONCLUSION

Plaintiff respectfully requests that this Court overrule the decision of the trial court and remand this case for discovery and trial on all claims.

Dated: January 30, 2011

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¹⁴ The hypothetical is not far from the reality of this case. Plaintiff did not have the necessary prerequisites for ARTH 5108, one of the two additional required courses. *See Appellant’s Appendix at 4, par. 14.*