

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR SAINT PAUL COLLEGE

In the Matter of  
JaNahne McCready-Johnson,

v.

**ORDER GRANTING  
SUMMARY DISPOSITION**

Saint Paul College.

This matter is before Administrative Law Judge Beverly Jones Heydinger on a motion for summary disposition brought by Saint Paul College (Respondent or the College). The Respondent's motion was received on February 23, 2009. The reply to the Respondent's motion, submitted by the Petitioner, JaNahne McCready-Johnson, was received on February 25, 2009. The record on this motion closed on the receipt of the Petitioner's reply on February 25, 2009.

Sara McGee, Assistant Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, Minnesota 55101-2127, represents the College. Gregg Corwin and Amy Lawler, Gregg M. Corwin & Associates, P.C., 1660 South Highway 100, 508 East Parkdale Plaza Bldg., St. Louis Park, Minnesota 56416-1534, represents Petitioner.

Based upon the record in this matter, and for reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

1. The Respondent's Motion for Summary Disposition is GRANTED.
2. The hearing scheduled to begin on March 12, 2009, is cancelled.
3. This matter is DISMISSED.

Dated: February 27, 2009

s/Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

## MEMORANDUM

### Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>1</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>2</sup> A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>3</sup>

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.<sup>4</sup> When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.<sup>5</sup> All doubts and factual inferences must be resolved against the moving party.<sup>6</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>7</sup> Summary judgment should only be granted in those instances where there is no dispute of fact and where there exists only one conclusion.<sup>8</sup>

### Undisputed Facts

The parties have not formally stipulated to any facts in this matter for the purposes of this motion. By comparison of the parties' filings, the facts set out in the following paragraphs appear to be undisputed.

Petitioner retired from her faculty position at the College, then known as Saint Paul Technical College (SPTC), on May 23, 2002. Under the employment contract, in force at the time, Petitioner could choose between the SPTC's retirement package and a St. Paul Public Schools (SPPS) retirement package.<sup>9</sup> Petitioner chose the SPPS

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<sup>1</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1995); *Louwegie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. Rules, 1400.5500K; Minn.R.Civ.P. 56.03.

<sup>2</sup> See, Minn. Rules 1400.6600 (2004).

<sup>3</sup> *Illinois Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

<sup>4</sup> *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>5</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

<sup>6</sup> See, e.g., *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994); *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971).

<sup>7</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).

<sup>8</sup> *Id.*

<sup>9</sup> College Exhibit A.

option.<sup>10</sup> Under the SPPS Agreement, Petitioner was entitled to employer contributions to her health insurance premiums until the age of 65.<sup>11</sup> The effect of this selection was to “freeze” the College’s health insurance contribution at \$718.07 per month, which was the College’s portion of those costs at the time of Petitioner’s retirement. Under the terms of the SPPS Agreement, any health insurance premiums above that amount were the responsibility of Petitioner.<sup>12</sup>

As envisaged at the time of Petitioner’s retirement, the Petitioner’s health insurer would bill the College in full each month for the health insurance premiums. The College would then bill Petitioner for her share of the premiums on a quarterly basis.<sup>13</sup> While the full costs of the health insurance were paid to Petitioner’s insurer, the College appears not to have followed through in the quarterly billing of Petitioner for her share under the Agreement.

In 2006, the College realized that no contributions had been received for Petitioner’s portion of her health insurance premium. The College calculated that portion as totaling \$12,255.96. On November 29, 2006, the College notified Petitioner that this amount was owed to the College and demanded that she pay the balance in full by January 3, 2007, or in three installments, with the last payment received by March 1, 2007.<sup>14</sup>

Petitioner did not make any payments on this claimed debt. On July 10, 2008, the College informed the Petitioner that nonpayment would result in referral of the claimed debt to the Minnesota Collections Enterprise (MCE), a unit of the Department of Revenue (Revenue or DOR), within twenty days. In its July 10 letter, the College notified Petitioner that MCE would add a 15 percent collection cost to the debt upon referral and an additional 10 percent fee if enforcement action was taken, pursuant to Minn. Stat. § 16D.11.<sup>15</sup>

After some months, the College referred this matter to MCE for collections. On October 28, 2008, MCE initiated a collections matter (identified as #002828733) regarding the claimed debt of \$12,255.96. The Petitioner was notified of this action by letter. The letter further explained that, pursuant to Minn. Stat. § 16D.11, MCE was adding collection fees in the amount of \$1,838.39. The letter also indicated that Petitioner had a right to a hearing before an Administrative Law Judge for the MCE’s collection costs.<sup>16</sup>

The October 28 letter from MCE contained the DOR *State agency debt collection: Collection fact sheet, (Collection fact sheet)*. Exhibit C. The *Collection fact sheet* stated: “if you are disputing the validity of the debt referred to the Minnesota

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<sup>10</sup> College Exhibit B, 1993-1995 Saint Paul Public Schools Master Agreement (“SPPS Agreement”).

<sup>11</sup> College Exhibit C.

<sup>12</sup> College Exhibit D.

<sup>13</sup> College Exhibit C.

<sup>14</sup> College Exhibit D.

<sup>15</sup> College Exhibit E.

<sup>16</sup> College Exhibit F.

Department of Revenue, you should contact the referring state agency. You may request an administrative hearing with them.”<sup>17</sup> The letter also referred to the process by which Petitioner could request a contested hearing from the College, to be held before an Administrative Law Judge. The letter referred Petitioner to the *OAH Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings (OAH Guide)*, which notes that the agency begins “an administrative contested case proceeding by issuing a Notice of Hearing. The Notice of Haring includes a description of what is in dispute, the names of the parties to the dispute, and some information about the rules that will govern how the hearing will be conducted.” The *OAH Guide* also explained that “[t]hose documents not only tell you what the agency believes the contested issues to be, they also give you important information about deadlines and about what rights you have.”<sup>18</sup>

On November 24, 2008, Petitioner delivered a letter to the College requesting a hearing, and referenced the *Collection fact sheet*, which stated that “if you are disputing the validity of the debt, you should contact the referring state agency. You may request an administrative hearing with them.” Petitioner requested a hearing from the College “on the issue on the debt of retiree health insurance premiums.”<sup>19</sup>

On November 24, 2008, Petitioner also sent a letter to DOR. In this letter, Petitioner informed DOR that she could not pay the debt and that she had requested an administrative hearing from the College. She also returned a completed financial form from an earlier DOR mailing, in which Petitioner outlined her fixed income and inability to pay the claimed debt.<sup>20</sup>

On November 25, 2008, the DOR sent Petitioner a notice indicating that she was expected to resolve her dispute over the validity of the referred debt by December 25, 2008, or the DOR would initiate collection action.<sup>21</sup>

On December 5, 2008, the DOR sent Petitioner a form for a payment agreement, which, according to its terms, Petitioner would be required to make “12 payment(s) of \$75.00 beginning 02/15/09. Payments will be due on the 15<sup>th</sup> of every month. The final payment is due on February 15, 2010.” The payment agreement also had a confession of judgment provision whereby Petitioner was acknowledging that judgment could be entered against her for a total of \$14,094.35. The first line above the signature block states: “By signing this agreement, you are agreeing to the extension of the statute of limitations dates for the debts covered by this agreement.” Petitioner signed the agreement on December 12, 2008. Petitioner also completed the Electronic Funds

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<sup>17</sup> Petitioner Exhibit C.

<sup>18</sup> Petitioner Exhibit C (referring to the *OAH Guide* at: <http://www.oah.state.mn.us/ccguide.html#contested>).

<sup>19</sup> Petitioner Exhibit D.

<sup>20</sup> Petitioner Exhibit E.

<sup>21</sup> Petitioner Exhibit F.

Transfer Authorization that would allow the payments to be directly drawn from Petitioner's bank account.<sup>22</sup>

On December 18, 2008, Petitioner's counsel sent a letter to the DOR seeking confirmation of discussions occurring the preceding week that the DOR would delay collection action on the claimed debt until after the hearing was held to contest the claimed debt.<sup>23</sup> On December 22, 2008, counsel for the College served a Notice and Order for Hearing on Petitioner through service on her counsel. The Notice and Order stated that the College "initiated this action to determine the validity of the debt owed to SPC [the College]," and set the matter on for contested case hearing to begin on February 6, 2009.

On January 15, 2009, counsel for the College and Petitioner spoke by telephone and counsel for the College indicated that the payment agreement executed by Petitioner made the contested case moot. The College requested a waiver of the February 6, 2009 hearing. Petitioner's counsel indicated that they were unaware of any payment agreement.<sup>24</sup>

On January 28, 2009, DOR waived its claim for collection costs of \$1,838.39. That waiver was confirmed in writing on February 14, 2009.<sup>25</sup>

On February 23, 2009, the College moved for summary disposition of this matter. On February 24, 2009, the Petitioner replied to the motion.

## **Disputed Matters**

Petitioner notes that the College sent no invoices from the date of her retirement to November 29, 2006, and maintains that the doctrine of laches or the applicable statute of limitations precludes the College from recovering some or all of the \$12,225.96 that the College seeks.<sup>26</sup> Petitioner maintains that his matter should be heard in the scheduled contested case proceeding to address the validity of the claimed debt.

The College, relying on the language in Minn. Stat. § 16D.16, asserts that the execution of the payment agreement renders this matter moot. Petitioner maintains that the ALJ retains jurisdiction to address the validity of the claimed debt and that reasons exist to address that issue in a contested case hearing.

Petitioner noted that her attorney did not receive a copy of any of DOR's payment agreement correspondence. Petitioner contended that she was "under the impression that, having requested a hearing, this paperwork was routine and preliminary, and was necessary to avoid having a lien put on her house or car. As a

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<sup>22</sup> College Exhibit J.

<sup>23</sup> Petitioner Exhibit G.

<sup>24</sup> Petitioner's Brief, at 4.

<sup>25</sup> College Exhibit K.

<sup>26</sup> Petitioner's Brief, at 5-8.

result, she filled out the paperwork and returned it, fully believing that she still [had] the right to challenge the underlying debt at a hearing before the OAH."<sup>27</sup>

Petitioner maintains that the payment agreement requires only that she make 12 payments of \$75.00 to satisfy her obligation. The College maintains that the conclusion of the payment plan means only that a new payment schedule will be negotiated for the remaining amount owed under the payment agreement.<sup>28</sup>

### **Jurisdiction under Minn. Stat. § 16D.16**

This matter was referred to OAH for a contested case proceeding under Minn. Stat. § 16D.16, which states:

Subdivision 1. Authorization. Unless prohibited by other law, the state agency utilizes a more specific setoff statute, or the state payments are subject to a more specific setoff statute, the commissioner or a state agency may automatically deduct the amount of a debt owed to the state from any state payment due to the debtor. Tax refunds, earned income tax credit, child care credit, funds exempt under section 550.37, or funds owed to an individual who is receiving assistance under the provisions of chapter 256 are not subject to setoff under this section. If a debtor has entered into a written payment plan with respect to payment of a specified debt, the right of setoff may not be used to satisfy that debt. Notwithstanding section 181.79, the state may deduct from the wages due or earned by a state employee to collect a debt, subject to the limitations in section 571.922.

Subd. 2. Notice and hearing. Before setoff, the commissioner or state agency shall mail written notice by certified mail to the debtor, addressed to the debtor's last known address, that the commissioner or state agency intends to set off a debt owed to the state by the debtor against future payments due the debtor from the state. For debts owed to the state that have not been reduced to judgment, if no administrative appeal process or a hearing by an impartial decision maker on the validity or accuracy of the debt has yet been made available to the debtor, before setoff for a prejudgment debt, the notice to the debtor must advise that the debtor has a right to make a written request for a contested case hearing on the validity of the debt or the right to setoff. The debtor has 30 days from the date of that notice to make a written request for a contested case hearing to contest the validity of the debt or the right to setoff. The debtor's request must state the debtor's reasons for contesting the debt or the right to setoff. If the commissioner or state agency desires to pursue the right to setoff following receipt of the debtor's request for a hearing, the commissioner or state agency shall schedule a contested case hearing

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<sup>27</sup> Petitioner's Brief, at 4.

<sup>28</sup> College Brief, at 4.

within 30 days of the receipt of the request for the hearing. If the commissioner or state agency decides not to pursue the right to setoff, the debtor must be notified of that decision.

The College notes that Petitioner entered into a payment agreement which has the statutory effect of halting any setoff action by Revenue. Petitioner maintains that the possibility of a future setoff action renders the current contested case hearing appropriate. Petitioner also maintains that there were flaws that render “the validity of the payment ... in question.”<sup>29</sup>

The questions raised regarding the payment agreement will be addressed in the next section of this Memorandum. The evidence before the ALJ on this motion shows that there is no dispute that Petitioner signed the document and submitted it to DOR as part of the collection proceedings for which this contested case proceeding was initiated. The terms of the document signed by Petitioner constitute a “written payment plan” within the meaning of Minn. Stat. § 16D.16, subd. 1. Under the express language of the statute, setoff is no longer available for collection of the amounts in the payment agreement, and the contested case should not have been set for hearing.

Petitioner maintains that further collection efforts may be undertaken in the future to obtain payments beyond the time period agreed to in the payment agreement. For this reason, Petitioner asserts that this matter must be heard now on the merits of the claimed debt. While Minn. Stat. § 16D.16, subd. 2, expressly makes validity of the claimed debt a possible issue, the contested case hearing is conditioned on the agency’s pursuit of setoff.<sup>30</sup> Even without a payment agreement, subdivision 2 expressly authorizes the agency to not pursue setoff, and thereby avoid the need for a hearing. With the execution of the payment plan by Petitioner, the College cannot pursue setoff, and the hearing must be cancelled.

### **Subject-matter Jurisdiction over the Payment Agreement**

Petitioner has advanced several arguments over the payment agreement. These arguments run toward the validity and terms of the agreement. Regarding changes to an executed settlement, the Minnesota Court of Appeals has stated:

We also address Darling’s contention that the equitable remedy of rescission should relieve him of the settlement, based on his understanding of the agreement and because he acted promptly in seeking relief and Pietsch was not prejudiced. “Equity will set aside a release and settlement if improvident or unconscionable and will prevent one party from taking an unconscionable advantage of another’s mistake.”

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<sup>29</sup> Petitioner’s Brief, at 6.

<sup>30</sup> Minn. Stat. § 16.16, subd. 2, also limits the availability of the contested case proceeding to debts that have not been reduced to judgment or for which some other hearing has not been held.

Jacobs v. Farmland Mut. Ins. Co., 377 N.W.2d 441, 444 (Minn. 1985) (citation omitted).<sup>31</sup>

The “equitable remedy of rescission” is a doctrine in contracts, whereby a party to the contract may be relieved of an obligation “on the grounds of mutual mistake, fraud, impossibility, etc.”<sup>32</sup> District Courts have subject-matter jurisdiction over contracts.<sup>33</sup> Nothing in Minn. Stat. § 16D.16 grants the ALJ authority over determining the validity of anything other than the claimed debt and the propriety of setoff.<sup>34</sup> The validity of the executed payment plan is outside the scope of Minn. Stat. § 16D.16.<sup>35</sup>

In addition to the lack of subject-matter jurisdiction, the relief requested lies in equity. ALJs do not have equity power to grant such relief.<sup>36</sup> The lack of ALJ authority is further complicated by the confession of judgment provision in the payment agreement. A confession of judgment is governed by Minn. Stat. § 548.22, which states:

A judgment for money due or to become due, or to secure any person against a contingent liability on behalf of the defendant, or for both, may be entered in the district court by confession and without action, upon filing with the court administrator a statement, signed and verified by the defendant, authorizing the entry of judgment for a specified sum. If the judgment be for money due or to become due, the writing shall state concisely the facts out of which the debt arose, and show that the sum confessed is justly due or to become due. If the judgment be for the purpose of securing the plaintiff against a contingent liability, the writing shall state concisely the facts constituting the liability, and show that the sum confessed does not exceed the same. The court administrator shall enter judgment for the amount specified, as in other cases, and shall attach the judgment to the statement, which shall constitute the judgment roll. The judgment shall be final, and, unless special provision be made for a stay, execution may issue immediately.

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<sup>31</sup> *Rory J. Pietsch, v. Michael J. Darling, et al.*, Docket No. C0-99-1632 (Minn.App. April 11, 2000) (<http://www.lawlibrary.state.mn.us/archive/ctapun/0004/1632.htm>).

<sup>32</sup> Black’s Law Dictionary 1306-07 (6th ed. 1990).

<sup>33</sup> Minnesota Const. Art. VI, Section 3 (<http://www.house.leg.state.mn.us/cco/rules/mncon/Article6.htm>); see *Wojtalewicz & Hohman Law Firm, Ltd. v. Linda Schoep, et al.*, C2-99-1146 (Minn.App. January 18, 2000) (<http://www.lawlibrary.state.mn.us/archive/ctapun/0001/1146.htm>).

<sup>34</sup> The ALJ also notes that, as a general matter, settlement divests a tribunal of jurisdiction for all but collateral matters. See *Citibank (South Dakota) N.A., vs. Kermit J. Erickson*, A05-2345 (Minn.App. August 1, 2006) (<http://www.lawlibrary.state.mn.us/archive/ctapun/0608/opa052345-0801.htm>).

<sup>35</sup> The parties also suggested that a contested case hearing right in this matter arose under Minn. Stat. § 16D.11 regarding the propriety of collection costs. That hearing right is triggered by the denial of an application regarding those costs. No such application was made or denied in this matter. Similarly, Petitioner’s citation of Minn. Stat. § 270A.01, et seq. (Revenue Recapture Act), does not trigger an appeal right. No recapture has been filed with DOR to trigger the right to appeal under that statute.

<sup>36</sup> See, generally, *Holmberg v. Holmberg*, 588 N.W. 2d 720 (Minn. 1999) (<http://www.lawlibrary.state.mn.us/archive/supct/9901/c797926.htm>).

A confession of judgment requires no further notice before entry of judgment.<sup>37</sup> The ALJ lacks authority to modify orders or judgments of the District Court.<sup>38</sup> While there is no evidence that such an action has yet been taken, there is nothing to prevent DOR from entering this obligation as a judgment.

There is evidence that the Petitioner signed the payment plan by mistake and without the advice of counsel. Also, the letters from the DOR and service of the Notice and Order for Hearing after the payment plan was received suggest confusion or poor internal communication at DOR. Although there may be a basis for equitable relief from the terms of the payment agreement, that question may not be resolved here.

## **Conclusion**

Petitioner has executed a payment plan with DOR addressing the claimed debt. That action precludes DOR from pursuing setoff at this time for repayment of that debt. Without a setoff action, there is no jurisdiction for the ALJ to conduct a contested case hearing under Minn. Stat. § 16D.16. Any disputes regarding the payment plan must be brought in a venue with jurisdiction over the subject-matter and the power to grant the relief requested. Since the ALJ lacks both subject-matter jurisdiction and the power to grant the requested relief, there are no genuine issues of material fact that remain for hearing. Summary disposition is granted to the College and this matter is dismissed.

**B. J. H.**

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<sup>37</sup> *American Summit Lending Corporation v. Burke Hennen*, C8-02-501 (Minn.App. November 26, 2002) (<http://www.lawlibrary.state.mn.us/archive/ctapun/0211/501.htm>) (noting that the District Court has jurisdiction over both the entry and modification of judgments entered by confession of judgment).

<sup>38</sup> See, *Holmberg*, *supra*.