

STATE OF MICHIGAN
COURT OF APPEALS

KERRY RADER,

Plaintiff–Appellant,

v

BOARD OF REGENTS, UNIVERSITY OF
MICHIGAN,

Defendant–Appellee.

UNPUBLISHED

September 27, 1996

No. 185917

LC No. 94-15426-CM

Before: Young, P.J., and Taylor and R. C. Livo,* JJ.

MEMORANDUM.

Plaintiff appeals as of right an order granting defendant summary disposition. We affirm.

Plaintiff applied to defendant to be classified as a resident for tuition purposes. Defendant denied her application. Plaintiff filed a lawsuit in the Court of Claims challenging defendant’s denial. The court summarily dismissed plaintiff’s complaint.

Plaintiff argues that the trial court inappropriately granted summary disposition to defendant by shifting the burden of proof onto her to establish that there was no genuine issue of fact with respect to whether she was a Michigan resident. In a motion for summary disposition under MCR 2.116 (C)(10), the court must determine whether a genuine issue of material fact exists. *Jackson v Detroit*, 449 Mich 420, 426; 537 NW2d 151 (1995). In the case at bar, however, it was not the role of the trial court to reexamine whether plaintiff was a Michigan resident but to determine whether defendant’s decision on the matter was arbitrary, capricious, or motivated by bad faith. *Speilberg v Bd of Regents, University of Michigan*, 601 F Supp 994, 999 (ED Mich, 1985). See also *Hauslohn v Regents of University of Michigan*, 85 Mich App 611, 615; 272 NW2d 154 (1978). The trial court’s statement that plaintiff did not submit adequate documentary evidence to support her claim of Michigan residency was an

* Circuit judge, sitting on the Court of Appeals by assignment.

explanation of its finding that defendant's decision was not arbitrary and capricious. It was not an inappropriate shifting of the burden of proof.

Plaintiff also argues that the trial court erred in ignoring relevant federal case law on equal protection. In *Eastman v University of Michigan*, 30 F3d 670 (CA 6, 1994), a student brought suit under 42 USC 1983 challenging the university's one-year residency requirement for in-state tuition benefits. *Id.* at 671. The Court held that if the university required physical residence of one year in Michigan before determining residency status, but then did not give retroactive credit to students determined to be bona fide domiciliaries, the university's policy would be unconstitutional. *Id.* at 674. In the case at bar, however, plaintiff's equal protection claim was not a 42 USC 1983 claim. Plaintiff's application for residency was denied not because she had not maintained a residence in Michigan for one year, but because she failed to submit sufficient documentation to overcome the presumption of non-residence. Therefore, the holding in *Eastman, supra*, is inapplicable and any error in its interpretation by the trial court is harmless.

Affirmed.

/s/ Robert P. Young
/s/ Clifford W. Taylor
/s/ Robert C. Livo