STATE OF MICHIGAN

COURT OF APPEALS

SUSAN AMAYA,

Plaintiff-Appellant,

and

TAMMY BUTLER,

Plaintiff,

v

MOTT COMMUNITY COLLEGE,

Defendant-Appellee.

UNPUBLISHED
March 7, 1997

No. 186755
Genesee Circuit Court
LC No. 94-030819-CZ

Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(8) and (10) in this action that presents the issue whether under Michigan law an implied contractual relationship exists between higher educational institutions and their students. We affirm.

Plaintiff became a student at Mott Community College in the winter of 1992 and began working on meeting the eligibility requirements for the Associate Degree in Nursing (ADN) program. She applied in January 1994 for admission into the fall ADN program. Her overall grade point average was 3.72 (on a 4.0 scale), and she had completed all of the required courses, except for a microbiology class, which she was taking that semester. Nonetheless, plaintiff was not accepted to the program. She and another student filed this lawsuit, seeking a declaratory judgment in their favor ruling that the basic relationship between an educational institution and its students is contractual, and that defendant had breached its implied contract with plaintiffs. Moreover, plaintiffs asserted they had detrimentally relied

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

on defendant's promise, sacrificing money for tuition and time that could have been spent with their families and other employment. They also sought injunctive relief forcing defendant to allow them to take classes in the fall ADN program.

First, plaintiff contends that the judge erred in finding that there was no implied contract between a college and its students. We disagree. Plaintiff cites numerous cases from foreign jurisdictions stating that the relationship between a student and educational institution is contractual in nature. She cites no Michigan cases or federal cases interpreting Michigan law to support this contention. Indeed, both state and federal courts have stated that under Michigan law contract and promissory estoppel claims brought by a student against a college or university fail.

In *Regents of the University of Michigan v Ewing*, 559 F Supp 791, 800 (1983), *rev'd* 742 F2d 913 (CA 6, 1984), *rev'd* 474 US 214, 106 S Ct 507, 88 L Ed 2d 523 (1985), a medical student asserted a right to retake a required examination that he had failed based on state law actions of contract and promissory estoppel and a federal law substantive due process rights under the Fourteenth Amendment. The student based his contract and promissory estoppel claims on informational materials provided by the university. The district court rejected both the state contract and promissory estoppel claims, "finding no sufficient evidence that the defendants bound themselves either expressly or by a course of conduct to give Ewing a second chance to take [the examination]." The Sixth Circuit Court of Appeals reversed the district court on the federal claim, but did not reach the state claims. The district court's ruling on the state claims was cited with approval by the United States Supreme Court in *Ewing, supra* at 223-224.

In *Cuddihy v Wayne State University Board of Governors*, 163 Mich App 153; 413 NW2d 692 (1987), a student dismissed from a Master of Education program because of poor academic and clinical performance filed suit seeking specific performance of the "contract" between herself and the university. She further claimed "that her academic adviser promised that she would be finished with the academic program by September, 1978, and she relied on that promise." *Id.* at 155. This Court affirmed the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10), finding that the plaintiff's claim appeared to lie in promissory estoppel rather than contract. This Court further held that plaintiff had no cause of action under a theory of promissory estoppel based on the holding in *Ewing* because the statement made by the plaintiff's academic adviser did not amount to an enforceable promise, but rather was merely an opinion. *Id.* at 157-158.

Plaintiff in the present case contends that defendant's catalog and published information materials, along with statements by defendant's employees, established a contract between herself and the college. However, defendant clearly notes on the first page of its catalog: "The information contained in this catalog is subject to change. The catalog cannot be considered as an agreement or contract between individual students and Charles Stewart Mott Community College or its administrators." Moreover, an ADN program informational package that plaintiff alleges forms part of the contract states under eligibility requirements that "[p]reference is given to students who have completed BIO. 156 [microbiology]," a course plaintiff had not completed before applying. Even if our

state law recognized the relationship between students and colleges as contractual, and we hold that it does not, defendant's disclaimers negate the existence of an implied or express contract.

Plaintiff next argues that the trial court erred in granting summary disposition because defendant had moved for an extension of the discovery period. We disagree. As a general rule, a motion for summary disposition is premature if granted before discovery on a disputed issue is complete. *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994). However, summary disposition may be appropriate before the discovery period is completed "if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Hasselbach v TG Canton*, 209 Mich App 475, 482; 531 NW2d 715 (1995). It is not clear from plaintiff's brief what additional discovery she planned to undertake that might lead to evidence that could defeat defendant's motion for summary disposition. Moreover, since Michigan does not recognize the relationship of a college and its students as contractual and plaintiff is not entitled to relief based on a theory of promissory estoppel, further discovery could not lead to evidence that would defeat defendant's motion for summary disposition.

Finally, plaintiff argues that a remark made by the trial court demonstrated that the court considered the possibility of other potential lawsuits if this one were successful and that such a consideration was improper and showed bias against plaintiff. The court's remark appears near the end of a well-reasoned opinion that summarizes the facts and law of the case in an even-handed manner. "The party who challenges a judge on the basis of bias or prejudice bears the heavy burden of overcoming the presumption of judicial impartiality." *In re Forfeiture of $1,159,420*, 194 Mich App 134, 151; 486 NW2d 326 (1992). For a case tried without a jury, "the issue of bias or prejudice should come to this Court's attention only when a litigant can show that the trial judge's views controlled his decision-making process." *Id.* at 153. Plaintiff has not overcome the presumption of judicial impartiality nor demonstrated that the trial court harbored bias or prejudice that controlled its decision making.

Affirmed.

/s/ Marilyn Kelly
/s/ Kathleen Jansen
/s/ Meyer Warshawsky