S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PHILIP EMEAGWALI, Plaintiff-Appellant,	UNPUBLISHED October 29, 1999
v	No. 209841 Washtenaw Circuit Court
UNIVERSITY OF MICHIGAN BOARD OF REGENTS, BENJAMIN WYLIE, ERDOGAN GULARI, NIKOLAOS KATOPODES, JOHN H. D'ARMS, STEVEN WRIGHT, and LINDA ABRIOLA, Defendants-Appellees.	Court of Claims LC Nos. 96-007465 CZ 96-016329 CM

Before: Murphy, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of defendants' motion for summary disposition. We affirm.

The events underlying this appeal involve plaintiff's attempt to obtain a doctorate degree from the University of Michigan. In 1987, the university accepted plaintiff as a precandidate into its civil engineering doctoral program. Plaintiff received a fellowship that would pay for his tuition and provide a monthly stipend. To obtain their degrees, doctorate students had to satisfy several requirements published by the university's civil engineering department. After their acceptance as precandidates, students had to take "at least one full term of graduate level studies beyond the Master's Degree level," and were expected to maintain above average grades. On completing a certain extent of course work and achieving a certain graduate grade point average, generally no later than twelve months after precandidate admission, precandidate students then took a qualifying examination consisting of both written and oral portions evaluated by at least four graduate professors. Students who passed the examination achieved "applicant" status; those who did not pass might or might not be reexamined. Successful applicant students then chose "a thesis topic in consultation with the faculty member chosen by the student to serve as Chairman of the Dissertation Committee." After the student obtained committee approval for his proposed course work and thesis research program, the student was

required to pass a preliminary examination, research and write a dissertation, defend the dissertation in a final oral examination, and publish the dissertation.

Between 1987 and 1991, plaintiff completed approximately thirty-five University of Michigan graduate credit hours. In the course of his studies, he applied for and won a 1989 Gordon Bell Prize, which "recognizes significant achievements in the application of supercomputers to scientific and engineering problems." Plaintiff did not take his qualifying examination until May 1991. He failed this examination, was given an opportunity to retake the examination in July 1991, and failed this examination as well.

During 1990 and 1991, plaintiff expressed to a dean and associate dean in the college of engineering concerns that defendant Benjamin Wylie, the civil engineering department's chairperson, was blocking plaintiff's progress toward his doctorate degree. Plaintiff believed that his graduate course work and his completed dissertation entitled him to sit for his qualifying examination, but that Wylie had "been evasive about setting specific examination dates" for plaintiff because he was African-American. In June of 1991, plaintiff applied for a joint doctoral program in civil engineering and scientific computing. In August 1991, defendant Erdogan Gulari, the associate dean for academic affairs in the engineering college, discussed with plaintiff the possibility of pursuing a program through the Laboratory of Scientific Computing (LaSC). An August 14, 1991 memorandum prepared by Gulari reflects his and plaintiff's agreement that plaintiff had not satisfied the requirements to pass the civil engineering qualifying examination. Gulari suggested that if plaintiff would provide Gulari his written dissertation by October 1, 1991, Gulari would suggest several experts, most of whom would be external to the university, to evaluate plaintiff's work and recommend whether it merited a doctorate degree. Gulari's memorandum noted that the graduate school would likely have to waive some candidacy requirements for plaintiff to qualify as a scientific computing doctorate candidate.

Plaintiff submitted his dissertation on July 24, 1992. The university faculty members who ultimately reviewed the dissertation did not view it favorably. On June 17, 1993, Gulari notified plaintiff that the engineering college faculty had concluded that his thesis was not worthy of a doctorate degree.

Plaintiff subsequently filed suit alleging that defendants had discriminated against him in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., and that defendants had breached a contract to award plaintiff a doctorate degree when he had satisfied his own contract obligations.[1]

I

Plaintiff contends that the trial court erred in dismissing his civil rights claims given that evidence existed showing that defendants discriminated against him. We review de novo the trial court's grant or denial of summary disposition. When reviewing a motion for summary disposition based on MCR 2.116(C)(10), we must review the affidavits, pleadings, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. The moving party bears the initial burden of supporting its position with documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. The nonmoving party may not rely on mere

allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. Summary disposition is properly granted pursuant to MCR 2.116(C)(10) if the evidence reveals there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

The ELCRA prohibits educational institutions from engaging in discriminatory behavior. MCL 37.2402; MSA 3.548(402).[2] A person claiming discrimination must first make out a prima facie case of discrimination, either by showing intentional discrimination or disparate treatment. *Meagher v Wayne State University*, 222 Mich App 700, 709; 565 NW2d 401 (1997). Intentional discrimination is proven by showing that (1) the plaintiff is a member of a protected class, (2) an adverse decision was made affecting the plaintiff, (3) the decision maker had a predisposition to discriminate against members of the protected class, and (4) the decision maker acted on that predisposition in reaching the decision. *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538; 470 NW2d 678 (1991). To prove disparate treatment, the plaintiff has to show that he was a member of a protected class and that he was treated differently than persons of a different class for the same or similar conduct. *Id.* A plaintiff claiming that a decision was discriminatorily motivated must produce some facts from which a factfinder could reasonably infer unlawful motivation. *Fonseca v Michigan State Univ*, 214 Mich App 28, 31; 542 NW2d 273 (1995).

A

In this case, plaintiff showed that he was a member of a protected class, and that defendants made a decision that adversely affected him. There was no evidence in the record, however, that any of the defendants had a predisposition to discriminate against African-Americans or, even assuming such predispositions existed, that the defendants acted on these predispositions. The only indication of predisposition that plaintiff presented was his own statement in a letter to Peter Banks, an engineering college dean, that he felt defendant Benjamin Wylie had been unduly harsh in his treatment of African-American graduate students in the engineering college. This statement represents only plaintiff's opinion and does not illustrate that Wylie or any other defendant was predisposed to discriminate against African-Americans, or that defendants acted on any such predisposition in considering plaintiff's participation in the doctoral program.

B

Plaintiff also contends that he made out a prima facie case of disparate treatment by showing that he completed the requirements for a scientific computing degree and that students of other races who completed the program had received degrees. Again, however, no evidence exists in the record that defendants treated plaintiff differently from others who twice failed the civil engineering qualifying examination.

Furthermore, plaintiff's contentions that he completed the doctorate requirements in scientific computing and that the trial court made irrelevant observations concerning the civil engineering program's requirements are not supported by the record. Plaintiff was admitted into the civil

engineering department's doctoral program. While a joint degree was available in civil engineering and scientific computing, the acquisition of the scientific computing doctorate depended on plaintiff's satisfaction of his home department's requirements, which included the qualifying examination. Moreover, the record contains no official acceptance of plaintiff into the joint program. With respect to plaintiff's suggestion that he satisfied the scientific computing doctorate requirements,[3] Gulari's August 14, 1991 memorandum indicated that to determine plaintiff's potential eligibility for a scientific computing doctorate, he would assemble a committee to examine plaintiff's dissertation. While plaintiff was supposed to submit his dissertation no later than October 1, 1991, he failed to do so until mid-1992. Additionally, he failed to receive favorable reviews of his dissertation.

C

Plaintiff raises several other alleged instances of discrimination, including (1) that he was denied a supercomputer account while white students received these, (2) that defendants evicted him from his civil engineering department office, (3) that he applied for a faculty position but was never interviewed, (4) that defendants intentionally misinformed the graduate school that plaintiff was no longer enrolled, thus terminating plaintiff's fellowship, (5) that defendants conspired to block plaintiff's admission to the scientific computing program, and that a memo concerning plaintiff's application for this program represented direct evidence of racial animus, and (6) that defendants used different criteria to evaluate plaintiff's dissertation than they used in evaluating the work of other students. First, plaintiff produced nothing other than his own unsubstantiated allegation to show that white students in his same position received supercomputer access. Second, plaintiff's only evidence of defendants' involvement in his removal from his civil engineering department office constituted hearsay from an anonymous source; moreover, plaintiff presented no evidence whatsoever that any action by defendants in this respect derived from racial animus. Third, plaintiff provided no specific information concerning any position for which he applied, nor any information regarding who interviewed or hired for the position, thus failing to satisfy his burden of proof. *Harrison v Olde Financial Corp*, 225 Mich App 601, 607-608; 572 NW2d 679 (1997). Fourth, plaintiff admitted in his deposition that he received all ten terms of his fellowship, and plaintiff is bound by this admission. *Braman v Bosworth*, 112 Mich App 518, 520; 316 NW2d 255 (1982). Fifth, even assuming arguendo that defendants engaged in a conspiracy to block plaintiff's entry into the scientific computing doctoral program, absolutely no evidence presented connects defendants' action to plaintiff's race. While an email copy revealing that someone apparently connected with LaSC "can't stand him [plaintiff]" represents evidence of animus, it is not evidence of racial animus. Lastly, plaintiff simply failed to produce evidence substantiating that white students received more extensive or better quality faculty feedback concerning their dissertations.

D

Plaintiff also raises for the first time on appeal several more ELCRA issues, including that he received unfavorable grades on his course work and qualifying examinations in retaliation for having filed complaints of discrimination, that defendants lied about plaintiff's academic record, and that he was denied various masters degrees. Plaintiff did not raise any of these issues, however, in either his complaint or his response to defendants' motion for summary disposition; plaintiff thus failed to preserve these arguments for our review. *Driver v Hanley (After Remand)*, 226 Mich App 558, 563-564; 575

NW2d 31 (1997). We have nonetheless examined these claims and find them unsupported by the record.

Accordingly, we conclude that the court did not err in granting summary disposition regarding plaintiff's ELCRA count.

II

Plaintiff next claims the trial court erred in granting summary disposition of his breach of contract action. Plaintiff argues that the court erred in finding that the August 14, 1991 memorandum drafted by Gulari[4] was not a contract for a doctorate degree. A valid contract requires a meeting of the minds on all material facts and essential terms. A meeting of the minds is determined by an objective standard, by looking to the express words of the parties and their visible acts, not their subjective states of mind. *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). While plaintiff interprets the memorandum as a contract for a Ph.D., no reasonable interpretation of the memorandum supports this conclusion. The memorandum contains no unequivocal language obligating defendants to grant plaintiff a degree in exchange for some specific action on plaintiff's part. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 171-172; 579 NW2d 906 (1998). The memorandum simply suggests plaintiff's best course of action to have his work considered for a Ph.D. His work was considered, and found not to merit a degree. Because nothing in the memorandum can be reasonably construed as reflecting a meeting of the minds and creating an enforceable agreement, we conclude that the trial court properly granting defendants summary disposition with respect to plaintiff's breach of contract claim.

III

Lastly, plaintiff contends that the trial court abused its discretion in failing to grant him time to find new counsel. We note initially that we need not address this claim because plaintiff has not cited any authority supporting his argument. *In re Pensions of 19th Dist Judges under Dearborn Employees Retirement Sys*, 213 Mich App 701, 707; 540 NW2d 784 (1995). Furthermore, this issue is without merit. A court's decision whether to grant a continuance or an extension is discretionary. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). Any motion for extension should be supported by good cause. *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991). Plaintiff's request for counsel that appears in his brief in response to the motion for summary disposition simply states without further explanation that "Plaintiff requests that this Honorable Court allow additional time in which Plaintiff could obtain new counsel." Under these circumstances, we conclude that the trial court did not abuse its discretion in failing to grant an extension.

Affirmed.

/s/ William B. Murphy
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage

[1] In June 1996, plaintiff simultaneously filed ELCRA and breach of contract counts in both the Washtenaw Circuit Court and the Court of Claims. Judge Shelton's opinion and order granting defendants summary disposition explains the early proceedings in these cases.

> The Court of Claims complaint is against the University of Michigan Board of Regents, Benjamin Wylie . . . and Erdogan Gulari . . . . The Circuit Court complaint is against the University, Wylie, Gulari, Nikolaos Katopodes . . . John H. D'Arms . . . Steven Wright . . . and Linda Abriola . . . . The Circuit Court complaint alleges violation of the [ELCRA] through race discrimination (Count I) and breach of contract (Count II). By an Order entered January 6, 1997 (Hon. James R. Giddings) the breach of contract claim against Defendants Wylie and Gulari was dismissed in the Court of Claims action. By an Order entered January 9, 1997 this Court dismissed the breach of contract claim against all Defendants in the Circuit Court suit. Thus the contract claim remains active only against the Regents of the University of Michigan and only in the non-jury Court of Claims. The ELCRA claims continue against the named defendants in each of the cases.

Although no order appears in the record received by this Court, apparently a January 24, 1997 order of Judge Giddings consolidated plaintiff's two suits within the Washtenaw Circuit Court.

[2] Although this ELCRA provision addressing educational institutions has received little judicial interpretation, this Court has looked for guidance to employment discrimination decisions. *Fonseca v Michigan State Univ*, 214 Mich App 28, 30; 542 NW2d 273 (1995).

[3] Plaintiff alleges that he successfully completed a scientific computing preliminary examination, citing a July 3, 1991 letter from an assistant professor in the university's electrical engineering and computer science department. The letter, titled "Evaluation of Philip Emeagwali in the Parallel Computing area," explained that after holding an "oral examination" of plaintiff, the professor believed that plaintiff "has an adequate knowledge of Parallel Computing." The professor ultimately recommended "that [plaintiff] is highly qualified in the area of Parallel Computing." The letter reflects that plaintiff solicited this review of his computing knowledge, and no record indication exists that any university department intended that plaintiff's successful completion of this "oral examination" would qualify plaintiff for a doctorate degree.

[4] The following represents the entirety of the "Subject" portion of Gulari's memorandum:

> SUBJECT: Our Discussions on Graduation With a Ph.D. Degree
>
> In order for everybody to be on the same wave length, I am repeating what we discussed in our meeting on Friday, August 2, 1991 at 11:00 a.m.
>
> 1. We agreed that according to Civil Engineering rules, you did not meet their criteria to pass the qualifying exam to eventually become a doctoral candidate.
>
> 2. We agreed that perhaps a proper degree for you will be from the Laboratory for Scientific Computation, if you are accepted.

3. We discussed that for you to graduate you first have to become a candidate for the Ph.D. degree, and this requires Rackham possibly waiving some of their requirements for candidacy.

4. We agreed that the most important issue to be decided was the quality of the work you have done. The quality will be decided by a panel of experts, most of whom will be external to the University. I indicated to you that I would try to come up with five or six names, some of whom will be from oil companies, who do basic research on flow in porous media. You also agreed to supply me with names of a couple of outside evaluators. We also agreed that the basic decisions with regards to whether your work is suitable for a Ph.D. degree or not will be based on an in depth evaluation by the external evaluators.

5. As soon as you can submit the draft of your thesis, I will begin the evaluation process.

6. In order for us to resolve the questions surrounding your work in a timely manner, I recommend that you assemble all of your written material for evaluation as soon as possible, but not later than October 1, 1991.

If the recommendations of the outside reviewers are positive, we will begin exploring possible ways of solving your dilemma.