IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ANGELA JU and FRANCES DU JU,	)	No. 63687-1-I
	)	
Appellants,	)	DIVISION ONE
	)	
v.	)	
	)	
THE UNIVERSITY OF WASHINGTON; KIMA LEIGH CARGILL; and SUSAN ELIZABETH JEFFORDS,	)	UNPUBLISHED
	)	
	)	FILED: June 1, 2010
	)	
Respondents.	)	
	)	
	)	

Cox, J. — Angela Ju appeals the trial court's order granting summary judgment to the University of Washington on Ju's breach of contract claims regarding her participation in certain foreign study programs. She also claims that the trial court judge should have recused himself because he had taught at the University of Washington School of Law. Ju fails to identify any genuine issue of material fact. The University is entitled to judgment as a matter of law. She also fails to demonstrate judicial bias. We affirm.

While a student at the University of Washington, Ju applied for and was accepted into an international study program in Cuba for winter quarter 2005-2006 under the supervision of Dr. Kima Cargill and Professor Cynthia Duncan. The course of study for 15 academic credits included classes in the Spanish language and Cuban culture and required class participation, weekly writing

assignments, quizzes, oral and written exams, and a research paper. Dr. Cargill and Professor Duncan determined final grades for the courses based on their own evaluations of student work as well as the grades awarded to the students by the Cuban professors. The students were to begin work on their research papers before they left for Cuba on January 5, and finish after their return on March 12.

Shortly after arriving in Cuba, Ju began missing classes and excursions complaining of a number of physical and medical problems. Dr. Cargill believed that Ju often engaged in behavior inconsistent with her reported symptoms and failed to complete recommended medical treatment. On January 27, Dr. Cargill met with Ju to identify unacceptable behavior and set conditions for Ju's continued participation in the program. After additional incidents, Dr. Cargill learned from the attending physician at the International Clinic that the Cuban doctors believed Ju presented a psychiatric case and recommended that Ju be returned to the United States for specialized care. Dr. Cargill consulted with doctors, University of Washington administrators, and the directors of the Cuban university program, who all agreed that Ju should be sent home. Dr. Cargill accompanied Ju back to the United States on February 10.

Shortly thereafter, Ju sought permission to return to Cuba to continue the program. University of Washington Vice Provost for Global Affairs Dr. Susan Jeffords and Assistant Vice Provost for International Education David Fenner informed Ju that she could return to Cuba if she submitted an updated medical

clearance form. Ju did not submit the form and was not allowed to return to Cuba.

When Ju expressed concerns about obtaining credit for the quarter, Dr. Jeffords offered either to refund the program fees or to allow Ju to complete all the course requirements and receive credit for her work. Fenner indicated that Ju could complete the course work if she could work out an independent study agreement with either Dr. Cargill or Professor Duncan. Dr. Cargill and Professor Duncan did not agree to supervise an independent study because they felt that the immersion experience in Cuba was an essential component of the program. Professor Duncan suggested that Ju ask a Latin American Studies professor or a Spanish professor to supervise her work. Instead, Ju submitted a final paper to Professor Duncan, who refused to grade it. Based on the grades submitted by the Cuban professors, Professor Duncan gave Ju a numeric grade for the Spanish language class but refused to give Ju grades for the remaining 10 credits of the program. Although the University awarded Ju all 15 credits, administrators refused to convert the ungraded credits to numerical grades.

By the time she returned from Cuba, Ju had been accepted into another international study program for the fall of 2006 in Rome. Dr. Jeffords informed Ju that she would not be allowed to participate in the Rome program unless she submitted an updated medical clearance form. Ju did not submit the required form and was not allowed to participate in the Rome program.

In February 2008, Ju filed this lawsuit against the University of

Washington, Dr. Cargill, and Dr. Jeffords, seeking damages for statutory violations, discrimination, retaliation, breach of contract, negligence, and emotional distress. By May 2009, only the claims for breach of contract and money damages remained. On May 15, Judge Harry McCarthy held a hearing to consider the defendants' motion to strike certain evidence submitted by Ju as well as their motion for summary judgment on the remaining claims. Judge McCarthy granted the motion to strike 13 of Ju's exhibits and granted the partial summary judgment motion.

Ju appeals.[1]

CONTRACT CLAIMS

Ju claims that the trial court improperly granted the motion for summary judgment after improperly striking certain of her exhibits submitted in opposition to the motion. We disagree.

A motion for summary judgment may be granted when there is "no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law."[2] A summary judgment motion must be supported by affidavits and set forth facts that would be admissible in evidence.[3] The moving party bears the initial burden of showing the absence of an issue of

[1] Respondents moved to strike certain portions of Ju's Revised Opening Brief, the Reply Brief, and Appendix. They also seek sanctions for her failure to cite to the record in her brief, as required by RAP 10.3. We considered Respondents' Motion to Strike Portions of Appellant's Revised Opening Brief, Reply Brief, and Appendix as well as Ju's Answer to Respondents' Motion, etc. We have only considered material that is properly before us in deciding this case. Moreover, neither this court nor Respondents have been unduly prejudiced by the failure of Appellant Ju to fully conform to the requirements of the RAPs. Accordingly, we deny the motion to strike.

[2] CR 56(c).

[3] CR 56(e).

material fact.[4] If the moving party is a defendant who meets the initial burden, then the inquiry shifts to the party with the burden of proof at trial.[5] If that party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," then the court should grant the motion.[6]

The essential elements of a contract are the subject matter, the parties, the promise, the terms and conditions, and the price or consideration.[7] A contract may be oral or written, and may be implied.[8] Because Washington follows the objective manifestation test for contracts, the parties must objectively manifest their mutual assent and the terms assented to must be sufficiently definite.[9] The party asserting the existence of such a contract, whether express or implied, bears the burden of proving each essential element, including the existence of a mutual intention.[1] "[B]are assertions of ultimate facts and conclusions of fact are alone insufficient to defeat summary judgment." [11]

Washington courts recognize that 'the relationship between a student and a university is primarily contractual in nature,' with the "specific terms to be found

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[4] Right-Price Recreation, L.L.C. v. Connells Prairie Community Council, 146 Wn.2d 370, 381-82, 46 P.3d 789 (2002).

[5] Id.

[6] Id. (quoting Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989)).

[7] DePhillips v. Zolt Constr. Co., Inc., 136 Wn.2d 26, 31, 959 P.2d 1104 (1998) (quoting Family Med. Bldg., Inc. v. Dep't of Soc. & Health Servs., 104 Wn.2d 105, 108, 702 P.2d 459 (1985)).

[8] Hoglund v. Meeks, 139 Wn. App. 854, 870, 170 P.3d 37 (2007).

[9] Keystone Land & Development Co. v. Xerox Corp., 152 Wn.2d 171, 177-78, 94 P.3d 945 (2004).

[1] Johnson v. Nasi, 50 Wn.2d 87, 91, 309 P.2d 380 (1957).

[11] Saluteen-Maschersky v. Countrywide Funding Corp., 105 Wn. App. 846, 852, 22 P.3d 804 (2001).

in the university bulletin and other publications."[12] However, while certain elements of the law of contracts may provide a framework to analyze a problem, "This does not mean that 'contract law' must be rigidly applied in all its aspects . . . The student-university relationship is unique, and it should not be and can not be stuffed into one doctrinal category."[13] Given the wide latitude and discretion afforded by courts to educational institutions in academic matters, and the fact that such agreements are often not integrated, "the standard is that of reasonable expectations – what meaning the party making the manifestation . . . should reasonably expect the other party to give it.[14]

Ju claims that the University breached "the contracts of the Cuba Program, the Rome Program, the Independent Study, and the Numerical Grades."[15] Regarding the Cuba Program, Ju appears to argue that because she was accepted into the program and paid the tuition and fees, the University breached a contract by sending her home early "against her free will."[16] To support its motion for summary judgment, the University submitted Dr. Cargill's declaration detailing her understanding and observations of Ju's behavior and medical complaints, the diagnosis reported by the Cuban doctors, and Dr. Cargill's consultations with University administrators to explain returning Ju to the United States before the end of the Cuba program. In response, Ju

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[12] Marquez v. University of Washington, 32 Wn. App. 302, 305, 648 P.2d 94 (1982) (citations omitted).
[13] Id. at 305-06 (citations omitted).
[14] Id. at 306.
[15] Brief of Appellant at 18.
[16] Brief of Appellant at 6.

contends that Dr. Cargill lied about Ju's behavior and medical condition, manipulated the Cuban medical personnel, and lied to University administrators in order to send Ju home.

In response, Ju refers to exhibits produced in opposition to summary judgment, which the trial court struck as inadmissible on evidentiary grounds on the basis of the University's motion to strike. The exhibits include e-mail messages from other students in the Cuba program and handwritten notes attributed to an investigator with the University Complaint, Investigation and Resolution Office. In the e-mail messages, Ju asked other students to "confirm" whether they were told that students missing class would receive zeros, to describe Dr. Cargill's class attendance or the availability of Internet access in Cuba, and to describe conversations in which Dr. Cargill appeared suspicious about Ju's reported temperature. According to Ju, the investigator's notes demonstrate that the investigation was biased and incomplete, the students were intimidated, and the professors lied in their declarations about Ju's academic performance.

Assuming without deciding in our de novo review of the trial court's decision to strike this material that the court erred, Ju fails to raise a genuine issue of material fact for trial whether the University breached any contract by sending her home from Cuba. It is undisputed that Ju repeatedly reported medical symptoms so significant that she missed classes and required excursions while in Cuba. Moreover, the Cuban doctors were unable to treat

Ju's condition and recommended that she return to the United States. There is nothing in the record to indicate that the University breached any contractual commitment to Ju by declining to allow her to remain in Cuba under these circumstances. Ju's self-serving and conclusory assertions that Dr. Cargill lied about Ju's condition and behavior to the Cuban doctors and to University administrators are insufficient to create a genuine issue of material fact to defeat summary judgment.

Similarly, Ju fails to identify any evidence in the record creating a genuine issue of material fact whether any contract required the University either to send her back to Cuba or to allow her to participate in the Rome program in the absence of her submitting an updated medical clearance addressing the problems that arose during her time in Cuba. It is undisputed that the University required every student to submit a medical clearance as a condition to participating in any foreign study program. It is also undisputed that University administrators offered to return Ju to Cuba and to allow her to study in Rome if she provided an updated medical clearance form. Ju does not claim that she submitted such an updated medical clearance form. In short, there is no genuine issue of material fact to show any breach in this respect.

Ju also claims that the University breached a contract to allow her to complete the credits for the Cuba program through independent study. We again disagree.

To support her claim, Ju identifies e-mail messages from University

administrators indicating that Ju could earn credits for the Cuba program by completing all the course work as an independent study supervised by Dr. Cargill or Professor Duncan. It is undisputed that neither Dr. Cargill nor Professor Duncan supervised Ju's work. But it is also undisputed that the University gave Ju 15 credits for the Cuba program. Under these circumstances, Ju fails to identify a genuine issue of material fact whether the University breached any contract regarding independent study.

Finally, Ju contends that the University breached a contract by giving her credit for the Cuba program courses without numerical grades. Without citation to any relevant, admissible evidence, Ju asserts that Mr. Fenner promised Frances Du Ju, Angela Ju's mother, that Ju would receive numerical grades as well as credit for the Cuba program courses. Additionally, Ju argues that the University Handbook requires the University to give her numerical grades.

The Handbook provides that "With appropriate departmental review and approval," faculty may offer courses for credit or no credit, that is "CR/NC," and that such courses "must be so designated in the *Time Schedule*."[17] Ju argues that because the Cuba program courses were not listed in the Time Schedule as CR/NC courses, the University must give her numerical grades.

But there is no reason to expect that the Handbook description of CR/NC courses would apply to the circumstances here.[18] It is undisputed that the Cuba

[17] Clerk's Papers 302.

[18] Marquez, 32 Wn. App. at 306-07 (handbook announcing availability of academic aid did not create right in applicant to obtain law degree absent his meeting reasonable standards).

program courses required students to attend and participate in classes in Cuba. When Ju returned to the United States before the classes were completed, Dr. Jeffords offered either to refund Ju's tuition or to allow her another way to complete course work and obtain credits. Ju fails to identify anything in the record to raise a genuine material issue of fact whether University officials either promised or were required to give her numerical grades for such credits.

In sum, Ju has failed in her burden to show a genuine issue of material fact regarding her contract claims. The University was entitled to judgment as a matter of law. Summary judgment was proper.[19]

RECUSAL

Ju claims that Judge McCarthy should have recused himself because he taught a trial advocacy class at the University of Washington School of Law in 2000 or 2002. We disagree.

A party alleging judicial bias must present evidence of actual or potential bias.[2] We use an objective test to determine if a judge's impartiality might reasonably be questioned by a reasonable person who knows all the relevant facts.[21] Without evidence of actual or potential bias, a claim of judicial bias is without merit.[22]

Ju fails to point to any evidence that Judge McCarthy was biased against

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[19] Frances Du Ju is neither an aggrieved party for purposes of appeal nor does she assert any claim on appeal.

[2] State v. Post, 118 Wn.2d 596, 618, 619 n.9, 826 P.2d 172, 837 P.2d 599 (1992).

[21] In re Marriage of Davison, 112 Wn. App. 251, 257, 48 P.3d 358 (2002).

[22] Post, 118 Wn.2d at 619.

her in any way. Merely because he taught at the University is insufficient, by itself, to show any bias.

Contrary to her claim, nothing in the record suggests that Judge McCarthy ignored her arguments or "disregarded the truth." [App brief at 24] Ju's dissatisfaction with the outcome of the summary judgment hearing does not amount to judicial bias against her.

We affirm the order granting partial summary judgment.

Cox, J.

WE CONCUR:

Spearman, J.

Schindler, J.