STATE OF MICHIGAN

COURT OF APPEALS

JASON MOSS,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY and WAYNE STATE UNIVERSITY BOARD OF GOVERNORS,

Defendants-Appellees.

UNPUBLISHED
December 1, 2009

No. 286034
Court of Claims
LC No. 08-000014-CK

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Wayne State University ("university") faced uncertainty about receiving state funds for the 2007-2008 academic year and decided to increase tuition by 12.8% and add a per-credit hour contingency fee. The contingency fee was eliminated for the winter semester of 2008, following the state's repayment of the deferred payment for 2007. The fees collected in the fall of 2007 were apparently used to pay off a foundation loan, to add to a rainy-day fund, and for improvement of classrooms and technology, research and clinical trials, and student retention programs. Plaintiff, as a representative of a class of students at the university, filed the instant lawsuit challenging the retention of the contingency fees collected in the fall 2007 semester despite the university's receipt of state funds.

The Court of Claims dismissed this case under MCR 2.116(C)(4) for lack of jurisdiction. The court reasoned that the Michigan Constitution does not permit interference with the management and control of a constitutionally created university unless an expenditure of its non-state appropriated funds violates the constitution or public policy. See Const 1963, art 8, § 5. We review the trial court's grant or denial of a motion for summary disposition de novo. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001).

This Court has held that we "may interfere with university control only if the proposed expenditure violates our Constitution or public policy." *Sprik v Regents of the Univ of Michigan*, 43 Mich App 178, 187; 204 NW2d 62 (1972), aff'd 390 Mich 84; 210 NW2d 332 (1973). But

the issue in this case is not whether the university used its funds appropriately, but whether it was legally entitled to keep the contingency fees from the fall 2007 semester. Thus, the Court of Claims had jurisdiction over the lawsuit.

The university issued the following press release in July 2007 regarding the tuition increase and the contingency fees:

> The adopted proposal also calls for a contingency fee of $13 per credit hour to help Wayne State guard against additional shortfalls if the university does not receive any or all of the $20 million in deferred state monies by the due date of October 17, 2007. The contingency fee will be discontinued for the winter semester if the state reimburses as promised.

Plaintiff argues that this press release constituted a contract between the university and its students, in which the university agreed to refund the contingency fees for the fall semester if the subsequent express condition, namely, that the state reimbursed the deferred payment as promised, was met. "The essential elements of a valid contract are the following: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005) (internal quotations omitted). Plaintiff argues that the press release, which stated that the fees were "contingent" and designed to "guard against additional shortfalls if the university [did] not receive" the full funding from the state, was a contract with an express condition that divested the university of its right to retain the contingency fee in the event it received funding from the state. There is no express contract here because the language in the press release did not explicitly include an agreement to return any fees collected if a condition was met.

Plaintiff also argues that there was an implied promise to return fees in the event that they were not needed. "Where the parties do not explicitly manifest their intent to contract by words, their intent may be gathered by implication from their conduct, language, and other circumstances attending the transaction." *Featherston v Steinhoff*, 226 Mich App 584, 589; 575 NW2d 6 (1997). Here, there is no indication that the university intended to return the contingency fees collected for the fall semester. In fact, the express language of the press release stated that "if the state reimburses as promised," the university would discontinue the contingency fee in the winter semester, which it did. The university made clear what it intended to do if that condition was met, and there is no indication that the university intended to enter a contract to return the fees collected in the fall semester if it received full state funding. The university's budget and finance committee decided to approve the contingency fee and issued the following statement: "[I]f the state's repayment comes through, and all money owed the university is repaid, the contingency fee would be eliminated in the Winter 2008 semester." Committee members even made suggestions on programs and projects for which additional funds could be used if the state reimbursed the university. The law requires mutual assent or a meeting of the minds on all the essential terms to constitute a contractual agreement. See *DaimlerChrysler Corp v Wesco Distribution, Inc*, 281 Mich App 240, 246; 760 NW2d 828 (2008). In this case, there was no such agreement on the part of the university to reimburse the fall semester contingency fees.

Plaintiff also argues that the university was unjustly enriched by the retention of the contingency fees. However, the university is a tax-exempt institution and, as such, it "fit[s] into the general education scheme provided by the state and supported by taxation, so that it makes a substantial contribution to the relief of the burden of the government in educating the people." *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709, 713-714; 346 NW2d 862 (1984). The fees collected were used for programs and projects to further the educational goals of the institution. "[T]he law implies a contract to prevent unjust enrichment, which occurs when one party receives a benefit from another the retention of which would be inequitable." *Martin v East Lansing School Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992). Here, plaintiff and other students gained a general benefit from the university's expenditures, which included spending in areas that would directly benefit students, such as on classroom and technological improvements. The university was not the sole recipient of a benefit: the students also benefited from these expenditures. Therefore, it was not inequitable for the university to retain the contingency fees under this theory.

"[W]e will not reverse the lower court when it reaches the correct result, albeit for the wrong reason." *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006). Here, the Court of Claims erred in granting summary disposition in favor of defendants for lack of jurisdiction. But because there was no enforceable contract, either express or implied, summary disposition is proper on this ground, and we will not reverse the trial court's ruling.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis