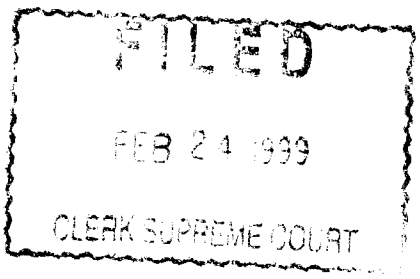
IN THE COURT OF APPEALS OF IOWA

No. 8-696 / 97-1814
Filed February 24, 1999



KENNETH P. ROBINSON AND DALE SANDERS,
Plaintiffs-Appellants,

vs.

UNIVERSITY OF OSTEOPATHIC MEDICINE & HEALTH SCIENCES,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Plaintiffs appeal a district court ruling granting the defendant's motion for summary judgment in their action seeking an injunction to prevent defendant from dismissing them from the school. **AFFIRMED.**

Roger J. Kuhle of the Law Office of Roger J. Kuhle, P.C., West Des Moines, for appellants.

Richard G. Santi and Steven L. Serck of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

VOGEL, J.

Plaintiffs appeal a district court ruling granting the defendant's motion for summary judgment in their action seeking an injunction to prevent defendant from dismissing them from the school. We affirm.

Background facts. Plaintiffs Kenneth P. Robinson and Dale Sanders entered the University of Osteopathic Medicine and Health Sciences in 1992 to pursue a Doctor of Osteopathy (D.O.) degree. Both students experienced immediate academic difficulties. Over the next four years Robinson failed thirteen classes and his first national board exam. Sanders was automatically dismissed after failing one course three times, but was conditionally readmitted in October of 1994. He failed fourteen classes altogether. In July of 1996, plaintiffs received letters from the University informing them that they were subject to dismissal for not being able to meet the requirements for graduation. Each student individually appeared before the Student Promotion and Evaluation Committee (SPEC) to present their cases against dismissal. SPEC ultimately recommended that both be dismissed. Plaintiffs were formally informed of their dismissal by letter in October of 1996.

Plaintiffs filed suit against the University, claiming their dismissals were arbitrary and capricious, and seeking damages and injunctive relief. After a hearing, the district court granted the University's motion for summary judgment and dismissed both claims. Plaintiffs now appeal.

Scope of review. We review a summary judgment ruling for error. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *See Id.*; Iowa R. Civ. P. 237(c). In doing so, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Anderson*, 559 N.W.2d at 31.

Limited review of academic dismissal. Plaintiffs claim there are numerous issues of fact in dispute which preclude summary judgment. However, we find that the material facts are not in dispute.

After their SPEC hearings, plaintiffs received identical letters from the Dean informing them of their dismissal. The letter stated as follows:

> The Student Promotion and Evaluation Committee voted to recommend your dismissal from the University based upon your academic performance which demonstrates a lack of professional promise sufficient to provide a meaningful opportunity to meet the requirements for graduation. I concur with the recommendation of the Student Promotion and Evaluation Committee in dismissing you from the University. Since your dismissal is based upon your academic performance, you have no further appeals within the University from this decision.

We find no evidence in the record to support that plaintiffs were dismissed for anything other than academic reasons. For this reason, our review of the University's action is limited. *See Lekutis v. University of Osteopathic Medicine and Health Sciences*, 524 N.W.2d 410, 413 (Iowa 1994); *Pflepsen v. University of Osteopathic Medicine*, 519 N.W.2d 390, 391 (Iowa 1994). We are reluctant to intervene in cases

involving dismissals for academic deficiency since such decisions are within the expertise of the school. *See Harvey v. Palmer College of Chiropractic*, 363 N.W.2d 443, 444 (Iowa App.1984) (citation omitted). "[W]hether to dismiss a student for academic reasons requires expert evaluation of cumulative information not readily adapted to the procedural tools of judicial or administrative decisionmaking." *Board of Curators v. Horowitz*, 435 U.S. 78, 90, 98 S. Ct. 948, 955, 55 L.Ed.2d 124, 135 (1978). Therefore, we will not overturn an academic dismissal unless "it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." *See Lekutis,* 524 N.W.2d at 413 (quoting *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L.Ed.2d 523, 532 (1985)).

Plaintiffs argue that the University departed from academic norms by deviating from the catalog and student handbook. They assert that the University's review of a student's professional promise cannot be made until *after* a student has completed all other requirements for graduation. However, we find no such time restrictions in the catalog or handbook, and are further convinced that the University has the ability to evaluate a student at any time during their enrollment.[1]

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[1] We note that the University catalog contains the following language:

> The information in this catalog does not constitute a contract between the University and the student. The University reserves the right to make changes in curricula, admission policies and processes, tuition and financial aid, academic standards and guidelines, student services and any other regulations or policies set forth in this catalog without giving prior notice.

Plaintiffs next contend that the SPEC committee failed to exercise their professional judgment due to interference by the University's president, Dr. Ryan. Initially, SPEC decided not to dismiss the plaintiffs. However, before SPEC issued its formal recommendation, Dr. Ryan met with SPEC members and reminded them of their duty to the University, the profession, and the public, to dismiss students who had demonstrated that they would not become competent osteopathic physicians. Although plaintiffs contend this meeting amounted to unfair interference by Dr. Ryan, we do not believe that Dr. Ryan's actions coerced SPEC members to vote for dismissal against their professional judgment. Dr. Ryan voiced legitimate and well-founded concerns to the committee. In its most recent accreditation review, the American Osteopathic Association had warned the University that it needed to address its practice of advancing and readmitting students with poor academic records. Informing the committee of these concerns was not improper. Furthermore, the committee members retained their own professional judgment in making their final recommendation to dismiss the plaintiffs as evidenced by a less-than-unanimous vote.

We have considered all other arguments by plaintiffs and found them to be without merit. There being no material facts in dispute, and the plaintiffs having failed to demonstrate that the University acted arbitrarily and capriciously in their dismissal, we hereby affirm the district court's ruling on summary judgment in favor of the University.

AFFIRMED.